

Exhibit 9

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matter of:

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6 VOYAGER DIGITAL HOLDINGS, INC., Case No. 22-10943 (MEW)

7

8 Debtor.

9 - - - - - x

10 VOYAGER DIGITAL HOLDINGS, INC.,

11 Plaintiff,

12 v. Adv. Case No. 22-01133 (MEW)

13 DESOUSA,

14 Defendant.

15 - - - - - x

16 THE AD HOC GROUP OF EQUITY INTEREST

17 HOLDERS OF VOY,

18 Plaintiff,

19 v. Adv. Case No. 22-01170 (MEW)

20 VOYAGER DIGITAL HOLDINGS, INC.,

21 ET AL.,

22 Defendants.

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U.S. Bankruptcy Court
One Bowling Green
New York, New York 10004

Monday, March 6, 2023
10:13 AM

B E F O R E :
HON. MICHAEL WILES
U.S. BANKRUPTCY JUDGE

1 HEARING Re: To reconsider approval of the disclosure
2 statement and confirmation of the Chapter 11 plan

3
4 HEARING Re: Motion by Michelle D. DiVita to appoint a
5 Chapter 11 trustee

6
7 HEARING Re: Motion by Tracy Hendershott to convert case to
8 Chapter 7

9
10 HEARING Re: Motions by Alah Shehadeh

11
12 HEARING Re: Motion for an equity committee and to hold the
13 directors personally liable

14
15 HEARING Re: Objection to the Official Committee of Unsecured
16 Creditors to proofs of claim nos. 11206, 11209, and 11213

17
18 HEARING Re: Adv. Pro. 22-01133-mew. Motion to extend
19 automatic stay or, in the alternative, for injunctive relief
20 enjoining prosecution of certain pending litigation against
21 the debtors, directors, and officers

22
23 HEARING Re: Adv. Pro. 22-01170-mew. Pre-trial conference.

24 Transcribed by: Jamie Gallagher, Sheila Orms, Tracey
25 Williams, Sherri Brach, and Cathy Kleinbart

1 A P P E A R A N C E S :

2

3 KATTEN MUCHIN ROSEMAN, LLP

4 Attorneys for the Debtor

5 575 Madison Avenue

6 New York, NY 10022

7

8 BY: STEVEN REISMAN, ESQ.

9 SHAYA ROCHESTER, ESQ.

10

11 UNITED STATES ATTORNEY'S OFFICE

12 Attorney for the United States of America

13 86 Chambers Street

14 3rd Floor

15 New York, NY 10007

16

17 BY: JEAN-DAVID BARNEA, ESQ.

18

19 WACHTEL, LIPTON, ROSEN & KATZ

20 Attorney for Metropolitan Commercial Bank

21 51 W. 52nd Street

22 New York, NY 10019

23

24 BY: ANGELA HERRING, ESQ.

25

1 FEDERAL TRADE COMMISSION

2 Attorney for Federal Trade Commission

3 600 Pennsylvania Avenue, NW

4 Washington, DC 20580

5
6 BY: KATHERINE JOHNSON, ESQ.

7
8 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

9 Attorney for the U.S. Securities and Exchange

10 Commission

11 100 F Street, NE

12 Washington, DC 20549

13
14 BY: THERESE SCHEUER, ESQ.

15
16 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

17 Attorney for the U.S. Securities and Exchange

18 Commission

19 950 E Paces Ferry Road, NE

20 Atlanta, GA 30326

21
22 BY: WILLIAM UPTEGROVE, ESQ.

1 JAFFE RAITT HEUER & WEISS, PC

2 Attorney for Jason Raznick

3 27777 Franklin Road

4 Southfield, MI 48034

5
6 BY: PAUL HAGE, ESQ.

7
8 SULLIVAN & CROMWELL, LLP

9 Attorney for FTX Trading Ltd. And its affiliates

10 125 Broad Street

11 New York, NY 10004

12
13 BY: BENJAMIN BELLER, ESQ.

14
15 ARENTFOX SCHIFF LLP

16 Attorneys for Voyager Digital Holdings

17 1301 Avenue of the Americas

18 42nd Floor

19 New York, NY 10019

20
21 BY: JEFF GLEIT, ESQ.

22 BRETT GOODMAN, ESQ.

1 NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

2 Attorney for the States

3 1850 M St., NW

4 12th Floor

5 Washington, DC 20036

6
7 BY: KAREN CORDRY, ESQ.

8
9 RUSKIN MOSCOU FALTISCHEK, P.C.

10 Attorney for Usio, Inc.; FiCentive, Inc.

11 1425 RXR Plaza

12 Uniondale, NY 11556

13
14 BY: SHERYL GIUGLIANO, ESQ.

15
16 YOUNG CONAWAY STARGATT & TAYLOR, LLP

17 Attorneys for the Committee Counsel in FTX Bankruptcy

18 Rodney Square

19 Wilmington, DE 19801

20
21 BY: MATTHEW LUNN, ESQ.

22 ROBERT POPPITI, JR., ESQ.

1 OFFICE OF THE ATTORNEY GENERAL OF TEXAS

2 Attorney for TX State Securities Board & TX Dept. of
3 Banking

4 P.O. Box 12548
5 Austin, TX 78711

6
7 BY: ABIGAIL RYAN, ESQ.

8
9 WINTHROP & WEINSTINE, P.A.

10 Attorney for N/A
11 225 South 6th Street
12 Minneapolis, MN 55402

13
14 BY: MICHELLE DIVITA, ESQ.

15
16 QUINN EMANUEL URQUHART & SULLIVAN, LLP

17 Attorneys for Voyager Digital, LLC Special Committee
18 51 Madison Avenue
19 New York, NY 10010

20
21 BY: KATHERINE SCHERLING, ESQ.

22 SUSHEEL KIRPALANI, ESQ.
23
24
25

1 LATHAM & WATKINS, LLP

2 Attorneys for BAM Trading Services Inc. d/b/a

3 Binance.US

4 885 3rd Avenue

5 New York, NY 10022

6
7 BY: NACIF TAOUSSE, ESQ.

8 ADAM GOLDBERG, ESQ.

9
10 PULMAN, CAPPUCCIO, & PULLEN, LLP

11 Attorney for USIO, Inc. and FiCentive, Inc.

12 2161 N.W. Military Highway

13 Suite 400

14 San Antonio, TX 78213

15
16 BY: RANDALL PULMAN, ESQ.

17
18 MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

19 Attorney for the New Jersey Bureau of Securities

20 1300 Mount Kemble Avenue

21 Morristown, NJ 07962

22
23 BY: VIRGINIA SHEA, ESQ.

1 MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

2 Attorney for the New Jersey Bureau of Securities

3 570 Broad Street

4 Newark, NJ 07102

5
6 BY: JEFFREY BERNSTEIN, ESQ.

7
8 KIRKLAND & ELLIS LLP

9 Attorneys for Voyager Digital Holdings, LLC, et al.

10 601 Lexington Avenue

11 New York, NY 10022

12
13 BY: EVAN SWAGER, ESQ.

14 CHRISTINE OKIKE, ESQ.

15 ALLYSON SMITH, ESQ.

16
17 KIRKLAND & ELLIS LLP

18 Attorney for Voyager Digital Holdings, LLC, et al.

19 300 North LaSalle

20 Chicago, IL 60654

21
22 BY: MICHAEL SLADE, ESQ.

1 KILPATRICK TOWNSEND & STOCKTON LLP

2 Attorney for Ad Hoc Group of Equity Interest Holders

3 1114 Avenue of the Americas

4 New York, NY 10036

5
6 BY: DAVID POSNER, ESQ.

7
8 KILPATRICK TOWNSEND & STOCKTON LLP

9 Attorney for Ad Hoc Group of Equity Interest Holders

10 1100 Peachtree Street NE

11 Atlanta, GA 30309

12
13 BY: PAUL ROSENBLATT, ESQ.

14
15 KILPATRICK TOWNSEND & STOCKTON LLP

16 Attorney for Ad Hoc Group of Equity Interest Holders

17 The Grace Building

18 New York, GA 10036

19
20 BY: KELLY MOYNIHAN, ESQ.

1 OFFICE OF THE U.S. TRUSTEE

2 Attorney for the United States Trustee

3 201 Varick Street

4 New York, NY 10014

5
6 BY: LINDA RIFFKIN, ESQ.

7
8 OFFICE OF THE U.S. TRUSTEE

9 Attorney for the United States Trustee

10 One Bowling Green

11 Suite 534

12 New York, NY 10004

13
14 BY: RICHARD MORRISSEY, ESQ.

15
16 MCDERMOTT WILL & EMERY

17 Attorneys for Official Committee of Unsecured Creditors

18 of Voyager Digital Holdings, Inc., et al.

19 2501 North Harwood Street

20 Dallas, TX 75201

21
22 BY: CHARLES COWDEN, ESQ.

23 CHARLES GIBBS, ESQ.

1 MCDERMOTT WILL & EMERY

2 Attorney for Official Committee of Unsecured Creditors

3 of Voyager Digital Holdings, Inc., et al.

4 1180 Peachtree Street, NE

5 Atlanta, GA 30309

6
7 BY: DANIEL SIMON, ESQ.

8
9 MCDERMOTT WILL & EMERY

10 Attorneys for Official Committee of Unsecured Creditors

11 One Vanderbilt Avenue

12 New York, NY 10017

13
14 BY: JOSEPH EVANS, ESQ.

15 DARREN AZMAN, ESQ.

16
17 UNITED STATES ATTORNEY'S OFFICE

18 Attorney for the United States of America

19 86 Chambers Street

20 New York, NY 10007

21
22 BY: LAWRENCE FOGELMAN, ESQ.

1 VERMONT DEPARTMENT OF FINANCIAL REGULATION

2 Attorney for Vermont DFR

3 89 Main Street

4 Montpelier, VT 05620

5
6 BY: JENNIFER ROOD, ESQ.

7
8 NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

9 Attorney

10 One State Street

11 New York, NY 10004

12
13 BY: JASON ST. JOHN, ESQ.

14
15 ALSO APPEARING:

16 TRACY HENDERSHOTT, PRO SE

17 GINA DIRESTA, PRO SE

18 JENNIFER WALL, PRO SE

19 DAN NEWSOM, PRO SE

20 MARSHALL MENDELL, PRO SE

21 LISA PROVINO

22 SETH JONES

23 JON WARREN

24 ANDREW RIZK

25 ARTHUR JONES

1 LISA DAGNOLI
2 DAN LAWRENCE
3 JASON RAZNICK
4 ANDRES LUCERO
5 BRAD RAWE
6
7
8
9
10
11
12
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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. And
3 we're ready to continue on the Voyager case.

4 MR. SLADE: Yes, Your Honor. Good morning.

5 THE COURT: Good morning.

6 MR. SLADE: Mike Slade for the Debtors. I hope
7 you had a good weekend. We have a couple of updates for the
8 Court. First is that Your Honor had made three requests of
9 Binance at the beginning of the confirmation hearing. And
10 Binance has agreed to make the changes for the first two.

11 First, we added language to the plan, clarifying
12 that cryptocurrency that is sent to Binance for customers
13 will always be held in trust by Binance. So I think what
14 Your Honor had said --

15 THE COURT: For all time.

16 MR. SLADE: For all time. Your Honor wanted to
17 make that clear, and there's additional language now. This
18 is in the revised plan that was filed at Docket No. 1138 at
19 Article 4(c) on page 31. And so I think it makes it
20 abundantly clear, and hopefully the Court will agree.

21 Second, Your Honor had asked with respect to the
22 unsupported jurisdictions that Binance give a cash out
23 option to all customers after three months in parallel with
24 the option given to, Your Honor used the example of
25 customers in Ohio, and Binance has agreed to that. That

1 appears in language that is in the new plan Article
2 C(3)(c)(i)(A) on page 23 of the plan. And so those two
3 issues should be resolved.

4 Your Honor had also asked them whether it was
5 possible to segregate customer data. That, we were not able
6 to convince them to change for Binance. They could explain
7 this to you whenever Your Honor would like, but it's an
8 economic issue for them. One of the things they bought of
9 the transaction was customer data, which Voyager had the
10 right to sell under Voyager's customer agreement and privacy
11 policy. So two out of the three changes were made, and the
12 revised plan was filed at Docket No. 1138. And I would
13 offer that into evidence.

14 THE COURT: What is the problem on the data
15 transfer?

16 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
17 Watkins on behalf of Binance.US. Thank you for the
18 opportunity to address the Court on this issue.

19 Essentially, Your Honor, the data transfer is from
20 Binance.US's perspective a core economic element to the
21 deal. This is a retail case, and in the retail world,
22 getting a customer in the door is everything. And so what
23 this --

24 THE COURT: Well, I thought what I said the other
25 day was that I didn't mind the transfer of the customers'

1 contact information, that it was just the remainder, the
2 customers' bank account, social security number, things like
3 that that would be transferred only after a customer had
4 elected to become a customer of Binance. So what's wrong
5 with that?

6 MR. GOLDBERG: So on those issues, that data
7 remains valuable to Binance.US, regardless of whether the
8 customer joins.

9 THE COURT: How?

10 MR. GOLDBERG: Well, it can be valuable if the
11 customer ever joins the platform in the future. As Your
12 Honor is well aware, over the last year we've seen
13 tremendous volatility in the crypto markets. People can
14 choose to exit the market and maybe come back in in the
15 future. And having that information reduces the cost
16 materially of onboarding a customer by having their KYC
17 information on hand already.

18 On this point, I think, Your Honor, it's important
19 to note that the Voyager privacy policy squarely provides
20 the ability of Voyager to transfer this data in connection
21 with the transaction to sell its assets, expressly including
22 a bankruptcy case.

23 THE COURT: Is there any reason you want it, other
24 than potentially to make onboarding easier in the future?

25 MR. GOLDBERG: Your Honor, that's the primary

1 reason. It is a valuable data. It reduces the cost of
2 onboarding. And it was part of the purchase price
3 agreement, and I think that that is a core part of why the
4 transaction was agreed at this pricing level.

5 I think Mr. Tichner (ph) testified that Binance.US
6 was asked to modify these terms and that this was an
7 economic point that affected the purchase price. So we
8 would respectfully request that Your Honor approve that part
9 of the transaction as part of the confirmation as a whole if
10 Your Honor is so inclined on the basis of the 97 percent
11 class acceptance of the transaction that evidences the
12 interest of the estate and the will of the majority behind
13 this transaction, Your Honor.

14 THE COURT: I have to tell you, I'm not entirely
15 convinced.

16 MR. GOLDBERG: I understand that parties have
17 raised issues with this aspect of the deal. No one has
18 submitted any law or evidence contrary to the legal position
19 that the -- each --

20 THE COURT: Well, just because you can do
21 something doesn't mean you should. Right? There's got to
22 be a business -- good business reason for it.

23 People, especially these days, are entitled to
24 have concerns about their sensitive financial and personal
25 information, particularly given the nature of the

1 information that's been accumulated here by Voyager.

2 I'm not convinced that just the possibility that
3 some customer will change his mind in the future and elect
4 to become a Binance customer is good enough reason to send
5 everybody's -- all of everybody's sensitive information to
6 Binance, even people who may not want to be Binance
7 customers.

8 MR. GOLDBERG: Your Honor, I should add Binance
9 provides the ability for any customer to delete their
10 accounts and their data. If a customer joins the Binance
11 platform and clears their assets out of that account, they
12 can then delete their account and their data on Binance.

13 This goes to the fundamental point, Your Honor,
14 Binance.US wants the opportunity to have customers
15 experience the platform.

16 THE COURT: If I require the wind down trustee, or
17 it should be the wind down plan administrator. I'm sorry,
18 the terms have been changing so much that I'm having trouble
19 using the right one. If I require the plan administrator to
20 keep custody of the customer data, so that if you do have
21 somebody who changes their mind in the future, it can be
22 immediately transferred to you by that customer. Why
23 doesn't that solve your issue?

24 MR. GOLDBERG: Well, that requires additional
25 resources on Binance.US's part, as well as materially

1 impacting, you know, administrative expenses of the case --

2 THE COURT: Why does it require additional
3 resources on your part?

4 MR. GOLDBERG: Well, I think rather than having a
5 bulk data transfer, it would require additional data
6 transfers as and when people elect in the future. The
7 ability of having that data, and having someone be able to
8 clear their account and trade very quickly is of economic
9 value to Binance.US. They would not have agreed on this
10 purchase price without these terms. Mr. Tichner testified
11 to that and that was uncontroverted, Your Honor.

12 THE COURT: I don't remember him testifying to
13 that specifically. And I certainly don't have testimony
14 from Binance on that point. So you're saying customers can
15 elect to erase data and get rid of their accounts, right?

16 MR. GOLDBERG: Yes.

17 THE COURT: So why shouldn't a customer have the
18 right to opt out of this data transfer and say that you
19 don't get their information?

20 MR. GOLDBERG: Well, that's a great question and
21 that goes exactly to the retail nature of this case, is that
22 Binance.US negotiated for the opportunity to have customers
23 experience the platform. Because it's one thing to say I
24 don't want anything to do with Binance.US, it's another
25 thing to experience the platform and decide after you have

1 the opportunity to take a look at it.

2 Getting the customer in the door is the value of
3 this deal, and that's the core fundamental economic
4 proposition.

5 THE COURT: Nobody is going to be in the door
6 unless they elect and sign Binance's various -- whoever's on
7 the phone, stop talking. Mute yourself. I'm having a
8 question with counsel here, please.

9 Customers have to go through other procedures
10 before they -- it's not like they're automatically --
11 without doing anything else, customers of Binance, right?

12 MR. GOLDBERG: That's right, Your Honor. The
13 customer has to accept the Binance.US terms.

14 THE COURT: And if they don't, nothing happens.
15 So I'm still stumped here. Why shouldn't a customer be
16 allowed to say, I don't want you to have my data?

17 MR. GOLDBERG: Well, each customer agreed in their
18 contract with Voyager, Your Honor, that Voyager had their
19 data and could sell that data as part of a transaction.

20 THE COURT: But I already said, just because you
21 legally can do something doesn't mean you should.

22 MR. GOLDBERG: I understand, Your Honor. The
23 reason -- the equitable reason that we should do this
24 transaction is because all customers benefit with payment of
25 money into the estate from these terms, and they would not

1 have agreed -- Binance.US would not have agreed on these
2 economic terms without acquiring all of this data.

3 THE COURT: And what if I were to just say that
4 anybody who hasn't become a Binance customer within six
5 months, you're required to delete their data?

6 MR. GOLDBERG: So I don't know, Your Honor. I'd
7 have to consult with my client. I don't think that that
8 would be part of the deal, and I believe that they would
9 seek economic adjustments to the transaction.

10 THE COURT: All right. You should talk to your
11 client and find a solution to this because I'm having
12 problems with it. Okay?

13 MR. GOLDBERG: Thank you, Your Honor.

14 MR. SLADE: Thank you, Your Honor. Again, Mike
15 Slade for the Debtors.

16 As I told you when we last left on Friday night,
17 the Debtors regrouped over the weekend to try to assess what
18 to do in light of the SEC's position. The other amendments
19 that were made to the plan that was filed yesterday relate
20 to the 1145 exemption. To the extent --

21 THE COURT: Do you seriously think that filing a
22 proposed order on Friday that has new injunctive terms is
23 compliance with due process with the procedures for seeking
24 an injunction?

25 MR. SLADE: I don't perceive us as being --

1 seeking new -- a new injunction, Your Honor.

2 THE COURT: You've added to your proposed order
3 brand new injunctions that would broadly ban the federal and
4 state governments from contending that an of your
5 transactions -- restructuring transactions are illegal or in
6 violation of any state or federal regulation of any kind,
7 and that would ban them from suing any person involved in
8 the transactions to stop them in any way, or to hold them
9 liable in any way.

10 You didn't seek such thing. In fact, just the
11 opposite of what you sought and what your original order
12 said. How is that an appropriate way to seek an injunction?

13 MR. SLADE: I guess that's not our interpretation
14 of what we're seeking. And if we need to adjust the
15 language, we can. What the Debtors are trying to do is, you
16 know, create a transaction and once we implement that
17 transaction in good faith, assure that we are not going to
18 be, you know, come after -- after the fact, after Your Honor
19 has approved the transaction.

20 To us, it's aligned with the common exculpation
21 terms that are in, you know, nearly every plan.

22 THE COURT: Not really. I don't think I've ever
23 issued an order in connection with plan confirmation that
24 says that if a regulator thinks there's a problem, the
25 regulator can't stop.

1 MR. SLADE: We're not saying that, Your Honor. If

2 --

3 THE COURT: Sure, you did. That's exactly what
4 your proposed order says.

5 MR. SLADE: So we certainly can work on the
6 language. What our position is, is that if the SEC were --
7 let's say, as an example, the plan is confirmed, and then
8 two weeks later, Cepheus says we want to block the
9 transaction. We're not saying that Cepheus doesn't have the
10 power to do that. They do. What we're saying is that our
11 efforts to implement the order that Your Honor would approve
12 today, that --

13 THE COURT: What if two weeks from today, the SEC
14 wants to accuse Binance of being an unregistered
15 broker/dealer and to shut its operations until such time as
16 it files registration?

17 MR. SLADE: Same thing.

18 THE COURT: They can do that?

19 MR. SLADE: They can do that.

20 THE COURT: It didn't look to me like they could
21 do it from reading your order.

22 MR. SLADE: Well, what we are trying to accomplish
23 is that -- what we are doing to effectuate the plan, until
24 and unless they change the rules, okay, they can't come back
25 to us and say retroactively, you are violating the rules,

1 even though all you were doing is honoring and trying to
2 effectuate a court order to return cryptocurrency to
3 customers. That is not -- that is not a fair outcome.

4 THE COURT: Let me put it differently. Are you
5 saying that you don't want individuals who are doing what I
6 have given them permission to do, to be subject to
7 penalties?

8 MR. SLADE: Correct.

9 THE COURT: So you're not trying to stop anybody
10 from doing what they can -- what their regulatory authority
11 would otherwise permit them to do?

12 MR. SLADE: Correct.

13 THE COURT: Simply saying that if I authorized
14 them based on the evidence in front of me, they shouldn't be
15 penalized based on a regulator later saying, by the way, I
16 didn't tell you at the time, but this was wrongful.

17 MR. SLADE: Correct, Your Honor. And I'll just --
18 as an example, Your Honor authorized us to start the
19 rebalancing when Your Honor approved the APA a month or so
20 ago. Then we see in there a filing that they think that
21 might violate the securities laws. It doesn't make any
22 sense for us to come and propose a plan, and for us to get
23 approved and start implementing it because we want to return
24 cryptocurrency to customers as soon as possible, and then
25 for the regulators to come at us after the fact that said,

1 oh, yeah, remember those super vague rules? They meant that
2 was illegal. That is not what's supposed to happen here.

3 THE COURT: A number of governmental entities
4 who've objected to your language, if all of the language is
5 -- if we change it to clarify, the only thing that it's
6 doing is saying that the people who have done what I have
7 authorized them to do are not liable for having done so, do
8 you have a problem with that?

9 MR. SLADE: That's fine, Your Honor.

10 THE COURT: Let me ask -- I assume that the SEC
11 and the other agencies who would object to this language are
12 on the phone, although I haven't looked at the list. Are
13 they there?

14 MS. RYAN: Good morning, Your Honor. This is
15 Abigail Ryan with the State of Texas. And we did object to
16 the language. Were changes to clarify that language are
17 fine. I think that very helpful because we read that
18 language as you did, to be very broad.

19 The only other portions that are objectionable are
20 the references back to paragraph 97 and 99 in the plan, and
21 to the exculpation provision. I mean, 97 and 99 in the
22 proposed order, and exculpation provision in the plan.

23 That basically guts any type of regulatory
24 enforcement as it excludes us from bringing any type of
25 case. They're injunction provisions, Your Honor. And so if

1 we could have those three things removed, our objection to
2 that language would be taken care of.

3 THE COURT: All right. We'll get to the
4 exculpation a little later, but I was more focused on the
5 new language that was proposed, and just what it was trying
6 to get at and what the proper scope of it would be.

7 How about the SEC or the Justice Department? The
8 other people who weighed in on this. With that
9 clarification, do you have an objection?

10 MS. SCHEUER: Your Honor, Therese Scheuer from the
11 U.S. Securities and Exchange Commission.

12 Your Honor, I think we would need to see the
13 precise language that the Debtors are proposing. I would
14 note that, you know, we have objected to confirmation on the
15 plan because there are risks that, you know, the
16 transactions may violate the security (indiscernible -
17 10:25:44). And to somehow, you know, be enjoining us
18 because -- in the face of our highlighting these regulatory
19 concerns is -- you know, Section 523(a)(19) (indiscernible -
20 10:26:06) prohibits -- excuse me, Your Honor, prohibits the
21 discharge of securities (indiscernible - 10:26:13)
22 violations in individual bankruptcy cases.

23 So I'm just unclear about precisely what the
24 Debtors will be seeking with this revised language.

25 THE COURT: I think what they're saying is -- you

1 know, at this point, the SEC hasn't actually taken a
2 position. It's sort of indicated to me in what I can only
3 describe as conclusory terms that there might be an issue as
4 to the VGX token. But I think all the Debtors are saying is
5 that, look, if based on the evidence that I have today, I
6 authorized the Debtors to do certain things, then the people
7 who do what I say that they can do shouldn't be penalized or
8 in hindsight subjected to penalties for allegedly having
9 violated laws and regulations that the applicable regulators
10 haven't stood up in front of me and said affirmatively that
11 they're being violated. That's just not fair.

12 You know, I understand, and nobody's trying to
13 stop you from making arguments as to whether something's
14 illegal, but if you want to penalize the people who will
15 actually do what they're proposing to do, and that I may
16 authorize them to do, you ought to be speaking up and taking
17 a more affirmative position today and not just showing up
18 later and say, got you. You know? We didn't give you any
19 reason to think that what you were doing, you know, was
20 going to be punished, but you know, now we've decided to do
21 so.

22 I mean, that's just -- how is anybody supposed to
23 do anything in the world if they have that hanging over
24 their heads?

25 MS. SCHEUER: Your Honor, it's not in every case

1 that we raise these kinds of concerns. The SEC has objected
2 to plan confirmation. We objected at the disclosure
3 statement phase. We objected to the motion to approve the
4 sale. The Debtors here are seeking to immunize themselves
5 and third parties. And they're -- I mean, the language that
6 they have in now, and I understand, you know, that it's --
7 they may be changing it, but it would allow them to make
8 securities laws and other violations in connection with
9 their restructuring transactions.

10 They're asking Your Honor for permission to
11 violate the securities laws to give them essentially a blank
12 check. We've raised concerns regarding the sale. We filed
13 an objection to the sale and disclosure statement. The
14 parties have been on notice that there are regulatory
15 concerns here and they've proceeded at their own risk.

16 I think that we would have to analyze the -- you
17 know, any revised language (indiscernible - 10:29:10) if we
18 could get comfortable with it.

19 THE COURT: The parties who are in front of me are
20 entitled to know whether they can proceed or not. If you
21 want to reserve the right to try to stop them and enjoin
22 what they're doing, if and when you eventually make up your
23 minds about this stuff, then I'm not going to stop you from
24 doing that.

25 But are you seriously telling me that without

1 taking a position on the issue at all, and only telling me
2 what the potential issue might be in a limited sense, that I
3 should leave a sword hanging over the heads of anybody who's
4 going to do this transaction, and tell them that although
5 I'm approving it, by the way, you might get -- you know, be
6 the subject of an enforcement action, and subject to
7 whatever penalties the securities laws might impose on you,
8 that it's okay with me, but, you know, you'd be crazy if you
9 did anything because you have no idea what the government
10 might do.

11 How can a bankruptcy case or any court proceeding
12 function with that kind of suggestion?

13 MS. SCHEUER: If Your Honor is suggesting language
14 that is (indiscernible - 10:30:37) with 1125(e).

15 THE COURT: I mean, look, if you want to do it a
16 different way, I'll tell you -- I'll compel you to come
17 forward with your evidence. And I will hold against you as
18 a matter of collateral estoppel and res judicata if you
19 don't come forward with it. Okay?

20 So there's no way that I'm going to approve a
21 transaction that essentially says to the business people
22 involved here, go ahead. Go forth. Subject yourself to
23 penalties. Okay?

24 I'm trying to leave you the ability to do what
25 your regulatory authority compels you to do, but just in a

1 way that doesn't, in hindsight, come back and unfairly
2 punish the people who may do what I authorized them to do.
3 If that's not good enough for you, then we'll have a full-
4 blown litigation today about whether this is legal or not,
5 and I'll make findings on it today. And they will bind you.

6 And I cannot imagine that you want that. Okay?

7 So all the Debtors are suggesting is that when we
8 have no clear contention that anything is in violation of
9 law, quite the opposite. We have the regulatory agencies
10 sort of -- practically deliberately avoiding taking a
11 position on the issue. That when I authorize it to go
12 forward and, in fact, order that it go forward by my
13 approval, that those people who are doing what I have
14 authorized are not subject to penalties or liabilities for
15 having done so. That's standard exculpation that I've done
16 in a lot of bankruptcy cases.

17 So I would hope you would agree to that because
18 the alternative is we just have to open up the hearing.
19 Because the one thing I'm not going to do is basically say,
20 go forward, but take your chances. That's not fair. It's
21 absolutely not fair. I don't know anybody in this case who
22 would or should go forward with that kind of risk hanging
23 over their heads.

24 So the language that I've approved in other cases,
25 I don't have it memorized, but in the Aegean (ph) case, I

1 said that parties were exculpated from liability for
2 entering into and performing under agreements and
3 transactions that have been approved by the Court. Okay?

4 And I think all the Debtors are saying is, you
5 know, it's just like personal liability of the people
6 involved. We're not trying to stop you from saying that as
7 a regulatory matter, something should be stopped. It's just
8 if you come in later and say, you know, we didn't tell you
9 at the time, but that was illegal and you're subject to this
10 fine and penalty. That's what it's meant to focus on.

11 MR. SLADE: Your Honor, the language we were
12 looking at over the weekend was from Aegean and also from
13 the Fairway case that Honor had.

14 THE COURT: Mr. Morrissey?

15 MR. MORRISSEY: Your Honor, very quickly. Richard
16 Morrissey for the U.S. Trustee. Good morning, Your Honor.

17 I just -- just for a point of clarification
18 regarding what Your Honor just said, coupled with what Your
19 Honor said a few moments ago about when we're going to deal
20 with the exculpation issues in general, I'm perfectly
21 prepared to wait for that.

22 But one of the issues we had was who generally is
23 covered by the exculpation provision, not just what actions
24 are covered. And I can defer that, but one of the issues we
25 have is that the distribution agent is included in the

1 exculpation provision. As a matter of fact, something was
2 just added to Article 6 of the plan, stating that rather
3 specifically, and I just didn't know when Your Honor wanted
4 to deal with that issue. But I'd be happy to wait if that's
5 Your Honor's preference.

6 THE COURT: Let's wait.

7 MR. MORRISSEY: Thank you.

8 THE COURT: All right. Does the SEC need time to
9 --

10 MR. BARNEA: Good morning, Your Honor. I'm sorry.
11 Can you hear me over the telephone?

12 THE COURT: Who's speaking?

13 MR. BARNEA: This is J.B. Barnea from the U.S.
14 Attorney's Office. We filed a limited objection to the last
15 proposed approval order last week, and then we saw the
16 revised language last night. If it would be possible for
17 the government to be heard as well.

18 THE COURT: Yes.

19 MR. BARNEA: So our concerns are somewhat
20 different, although overlapping with those of the other
21 governmental entities that Your Honor just heard from. We
22 cannot agree to an order that broadly immunizes all
23 participants, including non-debtors, from all possible
24 liabilities to all possible government authorities in
25 connection with implementing, you know, a variety of

1 transactions.

2 Transactions may incur taxable income. They would
3 then have to be responsible for those taxes -- for the
4 resulting payment of tax. And if there's a disagreement,
5 the IRS has to be free to go after them. People might
6 commit fraud in some ways, civil or criminal, in engaging in
7 transactions. The government has to be free to pursue that
8 fraud. People may violate all -- any number of rules or
9 regulations. We understand that the Court is prepared to
10 approve a transaction. It seems that way. And that's fine.

11 And in the event that --

12 THE COURT: Nobody is trying to deal with any of
13 those things. Here's the issue. Under Section 1142(a) of
14 the Bankruptcy Code, the Debtor and any entity organized or
15 to be organized for the purpose of carrying out a plan,
16 shall carry out the plan. Okay?

17 There is an affirmative statutory obligation once
18 I confirm a plan for the plan to be carried out. Now,
19 nobody has been willing to come forward and to actually have
20 a litigation in front of me today on the question of whether
21 anything that the plan would require the Debtor or the
22 winddown Debtor to do is actually illegal.

23 And if I confirm the plan, those people will have
24 a positive obligation under the Bankruptcy Code to do what
25 the plan contemplates. So for anybody to suggest that they

1 should both have a positive obligation to do those things,
2 and be subject to punishment under different statutes for
3 doing exactly what they are obligated by my order and the
4 Bankruptcy Code to do, makes no sense. Okay?

5 So if somebody thinks that what the individuals,
6 what the Debtors are going to be doing is illegal, they
7 should be speaking up. Okay? We are not going to bar
8 people from enjoining things. All we're saying is that
9 people shouldn't be subject to punishments.

10 If the SEC wants to step in and say Binance should
11 not be allowed to go forward because it's operating as an
12 unregistered dealer, I don't think anybody is stopping them.
13 If the SEC wants to try to enjoin the distribution of VGX, I
14 don't think we're trying to -- well, maybe we're trying to
15 stop that, depending on the 1145 issue that I haven't heard
16 yet. But not by this language we're not.

17 All we're saying is in the context of exculpation,
18 you know, that there are people here who are going to be
19 ordered by me to do these things when I confirm the plan.
20 And that should carry with it an exemption from legal
21 liability for doing what I am, in effect, ordering them to
22 do. Unless you want to step forward and tell me why I
23 shouldn't order them to do it. And so far, nobody's been
24 willing to do that.

25 Telling me people on notice. First of all,

1 nobody's on notice of anything here. I have a hard time
2 understanding just what basis it is for the limited things
3 that you told me the other day. And I certainly, if I were
4 one of the individuals who had an obligation to carry out
5 this plan, I wouldn't feel very comfortable that I knew
6 exactly what risks I was taking.

7 MR. BARNEA: Your Honor, the government -- putting
8 aside -- the government -- the parts of the government that
9 I represent right now, as opposed to the SEC or any other
10 office that may be separately represented in this case,
11 don't have any current sense that any specific transaction
12 is itself illegal. But that does not mean that someone may
13 not in executing those transactions violate some rule or
14 regulation, or incur a tax liability, or do something else
15 that may expose them to some kind of liability to the
16 government. And that is --

17 THE COURT: That's fine.

18 MR. BARNEA: -- what we are trying to protect
19 against.

20 THE COURT: They may vary from what they're
21 compelled to do under the plan, and may engage in who knows
22 what the mind can invent that might go wrong. And nobody's
23 trying to say that people are freed from that. They may
24 commit tax fraud. They may lie. They may do all kinds of
25 things, but the question is, you know, if I'm approving a

1 plan that authorizes a distribution to VGX, a pointed
2 example, and by my confirmation of that plan, the Debtors
3 are under a statutory obligation to distribute VGX in the
4 way that the plan contemplates.

5 For somebody to come in and say, you people who
6 did that are subject to fines under the securities laws,
7 even though you had no choice once I ordered it, would be
8 rather absurd, wouldn't it?

9 MR. BARNEA: Well, to the extent that the Court is
10 providing exculpation as allowed under 1125(e), I think
11 that's uncontroversial. If the question is if the Court is
12 going beyond that, that is a separate question.

13 THE COURT: Well, I already issued a decision in
14 Aegean about what I think about exculpation, and that I
15 think that I do have the power, and it is absolutely
16 appropriate for me to say that if people engage in
17 transactions that I approve, after notice and a hearing,
18 they shouldn't be liable for having done so. That makes
19 perfect sense to me.

20 Otherwise, I'm in effect having a meaningless
21 confirmation hearing, and leaving you with a regulatory veto
22 of what I'm doing. And you may have veto to the extent --

23 MR. BARNEA: Well, another way to put it is Your
24 Honor is authorizing parties to do something and they are --
25 those actions are subject to the normal rules and laws that

1 all actions in the world are subject to.

2 THE COURT: But you didn't listen to what I said.
3 When I confirm a plan, I'm not just giving somebody an
4 option. I'm not telling them that it's okay with me, and
5 they just take their chances. Under the statute, once I
6 confirm the plan, there is an affirmative obligation to do
7 what the plan contemplates. It's not an option. Okay?

8 The people who are involved here are required to
9 go forward. So it's not like I'm saying, well, it's okay
10 with me if you want to take that risk. That's not what it
11 -- that's not what confirmation amounts to.

12 MR. BARNEA: I understand Your Honor's position.
13 The government respectfully disagrees, and we would like to
14 see any final language to which we may well still have
15 objections before this matter is resolved.

16 THE COURT: You can certainly see final language,
17 and I'll ask the Debtors to dig out from the Aegean case,
18 and try to propose some language that's more consistent with
19 that.

20 What about this 1145 issue? You know, I don't
21 really have any indication at the moment of who is contended
22 to be the issuer of any cryptocurrency that might constitute
23 a security. There was a reference to VGX, and my guess
24 would be that the contention would be that Voyager was the
25 issuer or is the issuer of VGX. But I don't -- haven't

1 heard any contention that Voyager is the issuer of Bitcoin,
2 for example, which would -- and I have -- while I won't
3 contend that I understand all of the arguments about the
4 commodity and securities laws here, I would have trouble
5 understanding an argument that Voyager was the issuer.

6 So you've proposed that I find that everything is
7 exempt under 1145. But under 1145, to the extent that the
8 plan includes the offer or sale of a security of an issuer
9 other than the Debtor, that there's an exemption only if the
10 issuer of such security is required to file reports under
11 Section 13 or 15(d) of the Securities Exchange Act of 1934.
12 And in -- okay. I -- just I'll stop right there.

13 You're not prepared to tell me that you have
14 identified an issuer of all of these cryptocurrencies and to
15 show that they are in compliance with that provision so that
16 1145 applies to them, are you?

17 MR. SLADE: We included the language because the
18 SEC had said that VGX may be a security, and to the extent
19 they ultimately come to that conclusion, it would be likely
20 that Voyager was the issuer. So that's what we were talking
21 about when we included the 1145 language.

22 THE COURT: Yeah, but the language you've proposed
23 said all of your transactions, all of your cryptocurrency
24 transfers are exempt under Section 1145. Nice try, but I
25 mean, you plainly can't satisfy that requirement, can you?

1 MR. SLADE: We understand Your Honor's point. We
2 were talking about VGX. Who knows what the SEC is going to
3 say tomorrow.

4 THE COURT: All right. So you want to say that to
5 the extent that VGX is intended to be a security issued by
6 the Debtor, that it's subject to 1145? I don't know. Maybe
7 they have some theory that it's a security issued by
8 somebody else.

9 MR. SLADE: I don't know what their theory is.
10 They won't tell us.

11 THE COURT: But I can't apply 1145 if it's their
12 -- that's their theory, because you can't show me that the
13 issuer, if it's somebody else, just complied with those
14 other requirements. Right?

15 MR. SLADE: Well, I'm not sure if I can or can't,
16 to be honest. I would have to check with other folks that
17 know more about the token than me.

18 THE COURT: If the issuer were somebody other than
19 Voyager, you'd have to show me that the issuer had filed --
20 had been required to file the reports under Section 13 or
21 15(d) of the Securities Exchange Act of 1934. How would you
22 do that?

23 MR. SLADE: I don't know.

24 THE COURT: Yeah. So to the extent you say that
25 Voyager is the issuer of VGX, you're asking for the

1 application of 1145.

2 MR. SLADE: Correct.

3 THE COURT: And I saw the SEC's supplemental
4 objection, where they say that you just haven't made the
5 showings that you need to, and I think to the extent that,
6 as I have said, the extent that you wanted to seek the
7 application of 1145 to every cryptocurrency that you are
8 transferring, I think the SEC is entirely right. You
9 haven't and I don't think can make such showings.

10 But as to VGX, is there an -- what's the objection
11 as to the application of 1145?

12 MS. SCHEUER: Your Honor, Therese Scheuer for the
13 Securities and Exchange Commission.

14 THE COURT: Yeah.

15 MS. SCHEUER: Your Honor, I will just begin by
16 noting that these provisions were added to the plan and
17 confirmation order overnight. We had conjured and knew the
18 Debtors arguments, to the extent they have any, with respect
19 to VGX, and to discuss with other divisions, including the
20 Division of Corporation Finance. It is their role to review
21 these types of transactions.

22 If it's acceptable to the Court, we would request
23 permission to make a written submission following argument
24 on these issues, and any specific questions that Your Honor
25 may have regarding 1145.

1 THE COURT: Well, I raised the 1145 issue, and I'm
2 not sure I -- I'm not sure it's something that the Debtors
3 have to affirmatively invoke in their plan, is it?

4 MS. SCHEUER: Well, Your Honor, the Debtors have
5 the legal burden of demonstrating that 1145 of the Code or
6 4(a)(2) are available exemptions for them. And they've
7 provided no argument.

8 I am prepared to, you know, go forward with an
9 argument today, but I think as -- you know, to the extent
10 Your Honor has an additional specific question --

11 THE COURT: Well, I think the Debtor's initial
12 position is probably that VGX is not a security. So that's
13 probably why they didn't mention 1145. And I think what
14 they're saying is, hey, if you think otherwise, and this is
15 the question I had for you the other day, if you think
16 otherwise, the SEC, why wouldn't Section 1145(a) be
17 applicable?

18 And you're in the same boat you were the other
19 day, where you keep telling me it's the Debtor's burden.
20 It's the Debtor's burden. What is it that you think the
21 Debtor needs to prove that the Debtor hasn't shown in that
22 case?

23 If VGX is a security issued by the Debtor, what
24 more do you think the Debtor needs to show to me in order to
25 be entitled to Section 1145 as to the distribution of VGX

1 under the terms of the plan?

2 MS. SCHEUER: Your Honor, (indiscernible -
3 10:50:23) that 1145 is not available for the proposed
4 transaction because the crypto assets, including VGX, being
5 purchased and sold were not in exchange for claims. In the
6 rebalancing exercise, (indiscernible - 10:50:39)
7 distribution of securities for which there is no Securities
8 Act exemption.

9 For VGX, the rebalancing exercise appears to
10 involve within market purchases and sales that are not in
11 exchange for claims against the Debtor.

12 THE COURT: But when the --

13 MS. SCHEUER: So there's --

14 THE COURT: When the Debtors turn over VGX to
15 Binance for credit to customers' accounts, how is that not a
16 distribution on a claim?

17 MS. SCHEUER: Your Honor, I don't think you can
18 separate out that piece of the distribution from how it got
19 there. And it got there through the rebalancing transaction
20 or the rebalancing exercise.

21 THE COURT: Well, the Debtor have held VGX for a
22 long time. Right? I suspect that if the Debtors have done
23 anything, they've probably reduced how much VGX -- I don't
24 -- I have no idea what -- how the rebalancing worked. But
25 let's just focus on that, you know, to leave aside the

1 rebalancing. Let's just focus on the distributions. Okay?

2 When the Debtors --

3 MS. SCHEUER: Your Honor --

4 THE COURT: -- deliver things to Binance --

5 MS. SCHEUER: I don't think the Debtor --

6 THE COURT: Obviously, when the --

7 MS. SCHEUER: I don't think the Debtors were --

8 THE COURT: Obviously, when the Debtors give VGX
9 to Binance for credit to customer accounts, that is a
10 distribution on a claim.

11 MS. SCHEUER: My understanding, Your Honor, is
12 that VGX is subject to the rebalancing exercise. It is not
13 -- the Debtors aren't engaging in a rebalancing of VGX.

14 THE COURT: But when the Debtors take the VGX that
15 they have and give it to Binance for credit to a customer's
16 account, that act is plainly in distribution on a claim,
17 isn't it?

18 MS. SCHEUER: Your Honor, I don't think that you
19 can separate that fact out from how it got there. And it
20 got there through the rebalancing transaction -- the
21 rebalancing exercise.

22 THE COURT: So you're saying -- I understand that
23 you're saying that the rebalancing may have been
24 unauthorized transactions in securities. And I'm -- I
25 understand that you don't want to give up that argument, but

1 I'm trying to focus on, you know, they are different things,
2 whether you complained about how the Debtors got them or
3 not.

4 When the Debtor has turned VGX over to customers,
5 as the plan contemplates, that plainly is a distribution on
6 a claim, right?

7 MS. SCHEUER: Again, Your Honor -- I understand
8 Your Honor's position, but I don't think that you can --
9 (indiscernible - 10:53:35) position is that you cannot
10 separate the transaction out into those pieces. You have to
11 look at how VGX got there.

12 And as part of the rebalancing, you know, it
13 appears that Voyager is conducting a distribution of VGX to
14 Binance or any other party that's acting as a broker of
15 trades on behalf of Voyager in the rebalancing exercise.

16 Neither 1145 nor any exemption for that matter,
17 including 4(a)(2) is available for Debtors that are
18 conducting distributions. Nor is it available for
19 underwriters involved in such distribution.

20 THE COURT: Who is the underwriter here?

21 MS. SCHEUER: Potentially Binance.

22 THE COURT: How is Binance an underwriter here?

23 MS. SCHEUER: It could potentially be Binance or
24 any other party acting as a broker of trade on behalf of
25 Binance -- or Voyager in the rebalancing exercise.

1 THE COURT: Is that --

2 MS. SCHEUER: And if Your Honor would like further
3 detail on that, we would request permission to submit a
4 written submission.

5 THE COURT: Do you think any broker is an
6 underwriter?

7 MS. SCHEUER: In the rebalancing transaction,
8 Binance or potentially any other party acting as a broker of
9 trades on behalf of Voyager in that transaction may be
10 acting as an underwriter.

11 MR. SLADE: Your Honor, briefly. Just to respond
12 to the SEC's request for more time, I mean we provided them
13 all the information they requested about VGX in 2021. Since
14 the bankruptcy, we have responded to numerous information
15 requests from the SEC. I was on weekly calls with the SEC
16 to make sure we were satisfying their information --

17 THE COURT: You didn't ask for a specific 1145
18 finding until you -- until after I raised the issue on
19 Thursday, and then you mentioned that you might on Friday
20 night. And then you did over the weekend.

21 MR. SLADE: Well, the SEC didn't tell us that they
22 even thought anything might be a security until Friday
23 afternoon, after refusing to take a position the day before.
24 So --

25 THE COURT: But I'm not going to rule without

1 giving them a chance to be heard. I'm not going to give
2 them a long time to be heard because they have had some
3 notice. But if they want to make a submission, I'm going to
4 let them make it. And we're going to have to fix our timing
5 here, because either that or you drop your request as to the
6 VGX finding, because they're entitled to let me know what
7 their position is.

8 MR. SLADE: Okay. We also have a milestone for
9 today that Binance has not --

10 THE COURT: That's what I'm saying. You better
11 change it or you better drop the VGX, because we're not
12 going to do both. I'm not going to overrule the SEC's
13 objection without letting them be heard, and do all that
14 today just to meet your milestone. The issue has come up
15 too late.

16 So I will require them to make a submission. I'll
17 require it by tomorrow. I'll rule promptly. But you're
18 going to have to get relief from your milestone. I'm not
19 going to let your milestone be used to squeeze a party on an
20 issue that only came up effectively for sure over the
21 weekend. Okay?

22 MR. SLADE: The other thing I want --

23 THE COURT: I think it was reversible error for me
24 to do so, which wouldn't serve any of your purposes.

25 MR. SLADE: I'm not sure about that, but I

1 understand Your Honor's point. The one other thing I just
2 wanted to make sure that there was no ambiguity about,
3 pursuant to Your Honor's order that you entered, approving
4 our entry into the APA, the Debtors have been doing the
5 rebalancing. We have been selling VGX. And so I didn't
6 want Your Honor to be under any other impression, because
7 that has been happening, as Your Honor authorized us to do.

8 THE COURT: I understand that. No, I do
9 understand that.

10 MR. SLADE: Okay.

11 THE COURT: Right.

12 MR. SLADE: I was actually just standing up to
13 complete the evidentiary record, and I was going to hand the
14 podium to my colleague to do argument. So I guess, Your
15 Honor, I would offer the revised plan that was filed, which
16 was Docket 1138. And we did file a supplemental declaration
17 from Mr. Renzi to explain that as Docket No. 1139. And I
18 would offer those. And Mr. Renzi is here.

19 THE COURT: But I didn't see any supporting facts
20 in Mr. Renzi's declaration. It was just the explanation of
21 why you're seeking it.

22 MR. SLADE: Supporting facts for?

23 THE COURT: For anything. Whether VGX is a
24 security, whether you're the issuer, whether it's proper to
25 issue relief as to anything other than VGX. All I see is a

1 statement that -- an explanation that you're trying to
2 modify your plan, and that an argument is still -- it's not
3 really a declaration with any facts. It's not testimony.
4 It's an argument.

5 MR. SLADE: Okay. Mr. Renzi did discuss in the
6 declaration why we were making the change, what the change
7 was, and the fact that the Debtors don't believe VGX is a
8 security, and that we have an opinion letter from a
9 nationally recognized law firm supporting that view. I
10 mean, those are certainly facts.

11 THE COURT: Are you preparing to offer that
12 opinion letter into evidence?

13 MR. SLADE: I'm not. I don't have authority to do
14 that.

15 THE COURT: Well, then telling me there's an
16 opinion letter is just hearsay.

17 MR. SLADE: Not to the extent that it's offered to
18 show that the Debtors are relying on that fact to take a
19 position.

20 THE COURT: What -- why do I care what they're
21 relying on to take a position? What does that tell me?

22 MR. SLADE: I think it explains why the Debtors
23 are making this proposal in the plan.

24 THE COURT: I don't think I need any further
25 explanation. I know why you're seeking the approval, right?

1 It's pretty obvious why you're seeking it. It's a question
2 of whether you're entitled to it.

3 MR. SLADE: Okay. I guess I'm -- where would Your
4 Honor propose to go from here? I'm not sure.

5 THE COURT: Well, if you want the -- first of all,
6 I'm not going to give you a ruling on anything other than
7 VGX. And I'm not going to give you a ruling on anything
8 other than VGX insofar as you allegedly are the issuer of
9 VGX. As to whether I give you a ruling on that, I'm going
10 to let the SEC make a submission by no later than tomorrow
11 morning. And I will review it and consider it, and we
12 either get relief from your milestone as to the entry of a
13 confirmation order, or you'll have to drop the 1145 issue as
14 to VGX. I can't do both.

15 MR. SLADE: Okay. Can we take a recess and talk
16 about that, Your Honor?

17 THE COURT: Yeah. We'll take ten minutes.

18 (Recessed at 11:01 a.m.; reconvened at 11:16 a.m.)

19 THE COURT: Please be seated. Yes?

20 MR. SLADE: Thank you, Your Honor, we appreciate
21 the opportunity to discuss it and, you know, collectively,
22 we've come to the conclusion that as long as we get the
23 exculpation in the form that the Court has approved in
24 previous cases and we get confirmation that it's going to
25 apply to the rebalancing that has taken place pursuant to

1 the Court's order, that we won't need the 1145 exception,
2 and so we would be prepared to remove it.

3 And so what I would propose is we just proceed to
4 arguments on the confirmation issues under the premise that
5 we are going to proceed with the plan that does not include
6 the 1145 exception.

7 THE COURT: Okay.

8 MR. SLADE: And I would cede the podium to Ms.
9 Okike to do that.

10 MS. OKIKE: Good morning, Your Honor.

11 THE COURT: By the way, let me -- the debtors have
12 closed their case, is there any other party that has
13 evidence they wish to offer?

14 (No verbal response)

15 THE COURT: Okay, I'll consider the evidentiary
16 record closed then.

17 MS. OKIKE: Good morning, Your Honor, Christine
18 Okike of Kirkland & Ellis on behalf of the debtors.

19 Your Honor, in terms of argument, I would propose
20 to address each of the issues raised by the objectors,
21 followed by opportunity for the committee and the purchaser
22 to weigh in, if they so choose, followed by each of the
23 objectors, just in terms of proceeding in a way that makes
24 sense. Does that work for Your Honor?

25 THE COURT: I think so, but it may make sense to

1 take issue by issue rather than kind of have you run through
2 your position on all --

3 MS. OKIKE: Yes, correct --

4 THE COURT: -- 20 issues.

5 MS. OKIKE: -- that's what I was proposing.

6 THE COURT: Okay, good.

7 MS. OKIKE: So, Your Honor, I'm going to start
8 with feasibility. A number of the objections go to the
9 feasibility of the plan.

10 We believe the plan is feasible. It provides for
11 either the sale transaction or the liquidation transaction,
12 as applicable, as determined by the debtors to be in the
13 best interests of their estates.

14 Your Honor, with respect to the sale transaction,
15 a number of the objectors question Binance.US's financial
16 wherewithal and the security of the crypto to be transferred
17 to Binance.US.

18 Your Honor, based on our due diligence and
19 representations made by Binance.US, as highlighted in Mr.
20 Tischner's testimony, we believe that Binance.US has the
21 financial wherewithal to close the sale transaction.

22 Under the sale transaction, Binance.US would not
23 be required to pay the debtors the value of the
24 cryptocurrency on the Voyager platform to consummate the
25 transaction; rather, Binance.US will only be obligated to

1 pay up to 35 million in consideration to the debtors. We
2 have performed due diligence on Binance.US and Binance.US's
3 financials show that it has ample cash on hand to pay the
4 debtors up to 35 million in cash.

5 In addition, the risk of a run on the bank, which
6 has befallen some of the other companies in the industry, is
7 minimized by what we understand to be Binance.US's business
8 model. Our understanding, based on sworn statements by
9 Binance.US, is that Binance.US maintains a hundred percent
10 reserves for all of its customers' digital assets. That
11 means that if a customer has deposited one bitcoin with
12 Binance.US, Binance.US holds one bitcoin on account of such
13 customer. And, importantly, Your Honor, our understanding
14 is that Binance.US does not engage in any lending.

15 Based on what we know, even if all of Binance.US's
16 customers withdrew all of their assets, Binance.US would
17 still have the financial wherewithal to consummate the
18 proposed transaction.

19 Although the debtors will transfer substantially
20 all of the cryptocurrency on the debtors' platform to
21 Binance.US, assuming that the vast majority of customers
22 onboard onto their platform, Binance.US is essentially
23 serving as a distribution agent of that cryptocurrency to
24 accountholders in accordance with the plan.

25 Your Honor, the objectors also question the

1 security of the crypto to be distributed to customers once
2 transferred to the Binance.US platform. Your Honor, based
3 on our due diligence and sworn statements made by Binance.US
4 to the debtors, we understand that Binance.US holds digital
5 assets of its customers solely in a custodial capacity and
6 on a one-to-one reserve basis. Binance.US segregates
7 customer assets from Binance.US's digital assets on its
8 general ledger. Only employees of Binance.US are able to
9 move customer assets from the platform. Binance.US does not
10 lend or re-hypothecate customer assets.

11 Binance.US has the technical expertise, required
12 licenses, other than in the unsupported jurisdictions, and
13 existing infrastructure to perform its obligations under the
14 asset purchase agreement, including with respect to the
15 onboarding and making distributions to customers.

16 Binance.US maintains information security
17 protocols, policies, procedures, and standards consistent
18 with leading industry standards, which are reviewed by
19 multiple independent auditors and which Binance.US believes
20 are adequate to ensure the safeguarding of customer assets
21 and customer personally-identifiable information.

22 Your Honor, notwithstanding Binance.US's
23 representations, we believe the structure of the sale
24 transaction is designed to minimize risk, which also goes to
25 feasibility. These protections include, first, all of the

1 debtors' cryptocurrency will not transfer to Binance.US at
2 closing; rather, cryptocurrency and cash will be transferred
3 to Binance.US following closing on a weekly basis as
4 accountholders and OpCo general unsecured creditors complete
5 Binance.US's onboarding requirements.

6 Second, Binance.US has to make any cryptocurrency
7 and cash transferred to it by the debtors available to those
8 accountholders and holders of OpCo general unsecured claims
9 that have completed the onboarding requirements within five
10 business days of receipt, and to use commercially-reasonable
11 efforts to do it in 48 hours following receipt.

12 Third, accountholders and holders of OpCo general
13 unsecured claims will retain all right, title, and interest
14 in the distributions made to them on the Binance.US
15 platform.

16 Fourth, cryptocurrency will be held by Binance.US
17 solely in a custodial capacity in trust for the benefit of
18 accountholders with no time limitation.

19 Fifth, cash transferred to Binance.US for further
20 distribution to accountholders or OpCo general unsecured
21 creditors will at all times until transferred to such
22 creditor be held solely in a third party bank account of an
23 FDIC-insured financial institution solely for the benefit of
24 such creditors.

25 Sixth, Binance.US will not pledge, re-pledge,

1 hypothecate, re-hypothecate, invest, sell, lend, stake,
2 transfer, or use any of the cryptocurrency to be distributed
3 to accountholders for any period of time and without
4 retaining a like amount of cryptocurrency, except as may
5 otherwise be directed by such creditors.

6 Your Honor, the debtors believe these protections
7 significantly reduce the risks associated with the sale
8 transaction and the transfer of cryptocurrency to Binance.US
9 to facilitate distributions to creditors.

10 Your Honor, you may be wondering why we are still
11 considering the sale transaction given the numerous rumors
12 regarding Binance.US and, Your Honor, the simple answer is
13 that the sale transaction maximizes the value of the
14 debtors' estates.

15 As Mr. Tischner testified, based on our estimates,
16 the sale transaction will provide over a hundred million of
17 value compared to the liquidation transaction due to, among
18 other things, the costs of restarting the platform and
19 liquidating 20 percent of the unsupported tokens that cannot
20 be withdrawn in kind. Your Honor, the debtors believe --

21 THE COURT: What happens under the -- remind me,
22 under the Binance deal, what happens if I confirm it and
23 before closing the SEC gets an injunction against Binance
24 doing business?

25 MS. OKIKE: Your Honor, at that point, we would

1 proceed with the liquidation transaction.

2 THE COURT: What happens with your Binance deal,
3 is it terminated? Who has what obligation to whom?

4 MS. OKIKE: I would have to look at the specific
5 termination provisions. We do have a fiduciary out, so we
6 can always exercise that, but there are certain regulatory
7 actions which allow us to terminate the agreement without
8 exercising the fiduciary out.

9 THE COURT: And, if that happens, does one party
10 owe any money to the other for termination, for expenses,
11 for forfeiting of deposits, any of that kind of thing?

12 MS. OKIKE: It's very fact specific, Your Honor.
13 There are certain circumstances -- if we were to exercise
14 the fiduciary out in the absence of a purchase or a default,
15 it's likely that their expense reimbursement would be
16 triggered, but if there's a regulatory action, there's -- a
17 lot of those provisions were explicitly included in the APA
18 as to not trigger the expense reimbursement.

19 THE COURT: Okay. And are there circumstances
20 where Binance would give up a deposit or anything like that?

21 MS. OKIKE: Yes, Your Honor.

22 (Pause)

23 MS. OKIKE: So, Your Honor, with respect to the
24 good faith deposit, if Binance were to terminate the APA, in
25 the absence of a seller breach, we would be entitled to the

1 good faith deposit.

2 THE COURT: Okay. Okay, please go forward.

3 MS. OKIKE: So, Your Honor, we believe that the
4 sale transaction, to the extent that it can be consummated
5 and is in the best interests of the estates, is the most
6 value-maximizing option available to the debtors today, but
7 we recognize that this is a volatile industry and
8 circumstances change every day and, for that reason, we
9 included a toggle to the liquidation transaction whereby the
10 debtors would distribute cryptocurrency and cash to
11 creditors on their own if the debtors determine in their
12 business judgment between now and closing that the sale
13 transaction is no longer the highest or otherwise best
14 option.

15 So, Your Honor, we believe that the plan is
16 feasible whether we move forward with the sale transaction
17 or the liquidation transactions.

18 THE COURT: Okay.

19 MS. OKIKE: Would you like to hear from other
20 parties on feasibility before --

21 THE COURT: Yes. I think the SEC is the primary
22 objector who raised the feasibility; do they wish to be
23 heard?

24 (Pause)

25 THE COURT: Is the SEC on the phone?

1 MS. SCHEUER: Yes, Your Honor. My apologies, my
2 phone was muted. Therese Scheuer for the Securities and
3 Exchange Commission. And, Your Honor, I should have said it
4 earlier, but thank you for allowing us to participate in the
5 hearing today telephonically.

6 Your Honor, there's a lot -- going to some of the
7 points that Ms. Okike raised, there's a lack of credible
8 evidence demonstrating that customer assets are secure on
9 the Binance platform. No one from Binance testified and the
10 only evidence submitted about Binance are declarations and
11 testimony from Voyager's professionals.

12 Mr. Tischner admitted that his team doesn't have
13 expertise regarding the safety of crypto assets or security
14 protocols. He also testified that the debtors haven't hired
15 any expert to assist it in the review of the representations
16 made by purchaser.

17 Given the specific circumstances of this case,
18 Your Honor, that's concerning. And, as Your Honor has
19 observed, most of the assurances about the safety of assets
20 are based on hearsay. There were apparently some third
21 party reviews of the buyer's security protocols, but the
22 debtors haven't offered an adequate description or details
23 about those reports of evidence. Although there is an
24 officer certificate filed from Binance, it was not admitted
25 for evidentiary purposes and there was no opportunity for

1 cross-examination of the declarant --

2 THE COURT: What provision of --

3 MS. SCHEUER: -- and the debtor's professional --

4 THE COURT: -- Section 1129 of the Bankruptcy Code
5 are you invoking and do you think wasn't complied with by
6 not having a Binance witness testify or by not having an
7 outside security consultant look at the security protocols?
8 Just what is it about that that you think means that I
9 shouldn't confirm the plan or can't confirm the plan?

10 MS. SCHEUER: Your Honor, we acknowledge that this
11 is a liquidating debtor. The debtor is transferring its
12 assets and its customers to a buyer and I think making it,
13 for practical purposes, a successor, as discussed at the
14 last hearing, the staff believes Binance.US is operating an
15 unregistered securities exchange in the United States.
16 Binance.US and those seeking to trade on Binance.US may be
17 impacted by ongoing regulatory investigations, as previously
18 discussed with the Court. Given these issues, it could be
19 faced with highly challenging legal and practical issues,
20 and Your Honor is well aware of what effect a business
21 failure can have on a crypto platform.

22 THE COURT: But, you know, it doesn't sound like
23 there's a specific Code provision that you can point to that
24 suggests that I needed to actually have Binance testify
25 about its security protocols, for example, or that the

1 debtors needed to have an independent expert. You're kind
2 of picking away at what the debtors did in due diligence to
3 try to criticize it, but in terms of whether there should be
4 a sale to Binance, whether that makes sense as a business
5 matter, I think, under the applicable Second Circuit
6 authorities, my job and the limit of my authority is to
7 determine whether the debtors have exercised a reasonable
8 business judgment -- not a guarantee, but a reasonable
9 business judgment; not even the judgment that I would have
10 made, not even the judgment that another reasonable person
11 might have made, but a reasonable business judgment.

12 So on some of these points that you're complaining
13 about, you're really saying that you disagree; you would
14 have hired an outside security consultant and not just
15 accepted the audits that the debtors received. You would
16 have wanted a witness by Binance, although you didn't
17 subpoena a witness from Binance and nobody else did either.

18 But at the same time, while you criticize the
19 assurances and the value of the assurances that the debtors
20 got, nobody here has offered any -- and I mean any --
21 admissible evidence that anything of any kind is going on at
22 Binance that is wrong, that it is mistreating -- misusing
23 customer assets, that customers who go to Binance will be
24 unsafe, that it is not doing what it represented in its
25 sworn statement that it does in terms of the handling of

1 customers, that its security protocols are faulty, zero. I
2 have absolutely nothing on that point.

3 So criticizing, you know, just how strong the
4 assurances are that the debtors have received, how does that
5 get me to the point of saying that, as a matter of business
6 judgment that the debtors -- no reasonable person could
7 decide to go forward with this deal?

8 MS. SCHEUER: Your Honor, I think it goes to both
9 the adequacy of disclosures -- and this is the final -- the
10 hearing on final approval of the disclosure statement -- and
11 also feasibility of the plan under 1129(a)(11) --

12 THE COURT: Well, under 1129 --

13 MS. SCHEUER: -- Your Honor --

14 THE COURT: -- feasibility under 1129(a)(11) just
15 means that the confirmation of the plan won't be followed by
16 a further reorganization or a liquidation unless a
17 liquidation is contemplated in the plan.

18 So I already pointed out --

19 MS. SCHEUER: Yes.

20 THE COURT: -- even if everything goes wrong as to
21 Binance and it drops out of the deal, we have a toggle plan.
22 So I don't see how confirmation of the plan would create an
23 issue under 1129(a)(11).

24 MS. SCHEUER: Your Honor, I think, after the deal
25 closes, the toggle becomes unavailable. That's my

1 understanding from the debtors, they can correct me --

2 THE COURT: Yeah, I don't --

3 MS. SCHEUER: -- if that is not --

4 THE COURT: -- I don't think that's right. And,
5 you know, my job, under 1129(a)(11), is to confirm unless it
6 is likely that there's going to be a further reorganization
7 or liquidation, the only evidence I have is that it's not
8 likely.

9 I mean, I'm as worried as anybody else. I'm the
10 one who's probably going to be blamed if anything does go
11 wrong here. But, you know, I'm a Judge; I'm not a
12 regulator, I'm not an investigator, I have -- not only do I
13 have no independent information on any of these points, as a
14 matter of judicial ethics, I'm barred from having
15 information on any of these points. I can only consider the
16 evidence that the parties have brought in front of me.

17 I am aware of scores of hearsay allegations and
18 conclusory arguments that, gosh, aren't we worried, maybe
19 Binance is another FTX, but I have absolutely -- and I mean
20 absolutely -- zero, zero evidence that any of that is true.

21 So, given my role, given what I'm supposed to do
22 here, how could I possibly say that the risks of Binance
23 here are so great that the debtors could not reasonably make
24 the choice that they are making? How could I possibly
25 conclude that based on the actual evidence that I have,

1 particularly when you like to make hints and suggestions,
2 but you haven't offered me anything?

3 You know, you criticized the review of the
4 security protocols. I don't have any reason -- so far as I
5 know, you don't have any reason -- to doubt the security
6 protocols that Binance uses, at least you haven't elected to
7 clue me in on any.

8 So, you know, all these little kind of nits and
9 gnats criticisms, how do they amount -- how do they get you
10 to the point of saying that the debtor's business judgment
11 has been wrongfully exercised here and no reasonable person
12 could want to do this?

13 MS. SCHEUER: Your Honor, I think the issues that
14 we're raising can also be looked under 1125 and whether the
15 debtors have provided adequate information about risk and
16 how it could affect customers who transfer to the Binance
17 platform.

18 THE COURT: Well, the debtors told customers that
19 they understood that Binance holds assets in custody, they
20 told customers that they understand that Binance holds
21 assets in a one-to-one ratio, so that -- and that it doesn't
22 lend or re-hypothecate. They told customers that they are
23 satisfied that Binance has the financial resources to
24 complete this deal. Okay?

25 Now, you've called this a disclosure issue. I

1 said at the beginning and I'll repeat it: this is a
2 substantive objection masquerading as a disclosure issue.

3 The debtors have made clear that as questions come
4 up, as newspaper articles appear, they have and will
5 continue to ask questions of Binance. That doesn't mean
6 that every single time they have a conversation with Binance
7 we have to stop, redo the disclosure statement, and start
8 this entire process over again.

9 We would never get anywhere if we had to do that
10 and it would be peculiar because, you know -- well, I'm
11 certainly not going to tell the debtors that they have to
12 stop doing their due diligence at the risk of having to redo
13 their disclosure statement. Maybe they haven't done as many
14 things in due diligence as you think they should have done
15 or you don't like the degree of assurances that they've
16 gotten, those aren't disclosure issues. Those are
17 substantive criticisms of the due diligence, there's no --
18 the debtors haven't changed their conclusions that they
19 offered in the disclosure statement.

20 And, you know, you're just saying that you wanted
21 more, that's all, that you think that the debtors should do
22 more before they do this deal. I don't think those are
23 disclosure issues, I think those are questions of business
24 judgment. The debtors -- I just don't see where, you know,
25 for example, the fact that the debtors looked at an

1 independent audit of security protocols and didn't
2 commission their own, I don't see that that's a disclosure
3 issue in the slightest.

4 And as to the risk of --

5 MS. SCHEUER: Your Honor --

6 THE COURT: -- as to the risk of regulatory
7 actions, the debtors did say that it's a highly uncertain
8 regulatory environment. There are several places in the
9 disclosure statement they said they couldn't predict what
10 regulators would do. Regulators may decide to take action;
11 it's an extremely uncertain environment, they don't know
12 what people might do.

13 So you can't even tell me what you're going to do,
14 so what was the debtor supposed to say other than what they
15 actually said?

16 MS. SCHEUER: Your Honor, the debtors didn't
17 include how distributions to accountholders and their
18 ability to trade could be affected by regulatory
19 investigations and potential regulatory actions if they're
20 successful. You know, Mr. Raznick testified that those
21 risks he didn't take into account in putting together his
22 liquidation analysis. These are all disclosure issues that
23 could have informed how creditors vote on the plan --

24 THE COURT: Well --

25 MS. SCHEUER: -- because the numbers --

1 THE COURT: -- as to how --

2 MS. SCHEUER: -- as presented --

3 THE COURT: -- as to how this could affect the
4 ability to trade at Binance, for example, I asked you --
5 your colleague, actually, was standing at the podium on
6 Thursday -- if the SEC were to take action contending that
7 Binance needs to register as a broker/dealer, would that
8 mean that all Binance activities would have to stop, or
9 would it just mean that the particular activities that
10 required registration would have to stop, but that other
11 activities could continue, and your answer was you don't
12 know.

13 So now you're telling me that the debtors should
14 have made a prediction on this point and should have
15 disclosed to their customers exactly what would happen in
16 this situation when you yourself couldn't answer the
17 question. So how does that make sense?

18 (Pause)

19 THE COURT: Do you have an answer?

20 MS. SCHEUER: To clarify, I think, you know,
21 subject to all of the caveats that were stated at the last
22 hearing, you know, as to that point, Your Honor, the staff
23 believes that, you know, based solely on the facts and
24 circumstances known to the staff that they previously
25 stated, that Binance.US is operating an unregistered

1 securities exchange in the United States, and Binance.US and
2 those seeking to trade on Binance.US may be impacted by
3 ongoing regulatory investigations and could be faced with
4 highly challenging legal and practical issues.

5 THE COURT: Well, did you say that to anybody
6 publicly before last Friday? And, if not, how are you
7 contending that the debtor should have disclosed it in the
8 disclosure statement that they circulated in January?

9 MS. SCHEUER: I think the regulatory risks were
10 known to the parties -- could have been disclosed by the
11 parties involved.

12 THE COURT: I'm sorry, I couldn't understand what
13 you said; could you repeat it?

14 MS. SCHEUER: Regulatory risks could have been
15 disclosed by the parties involved.

16 THE COURT: They did disclose. They said they
17 didn't know what regulators might do.

18 (Pause)

19 THE COURT: Are you saying they should have
20 somehow anticipated the exact statement that you wound up
21 making this past Friday. They should have read your mind
22 and known six weeks in advance that you were going to take
23 that position?

24 MS. SCHEUER: Your Honor, it could have been
25 modeled from -- in numbers that were provided in the

1 liquidation analysis or, you know, further risk factors or
2 caveats added to make clear that distributions could be
3 affected by those risk factors.

4 THE COURT: I think they did that. They said they
5 don't know what's going to happen with regulators; that the
6 regulators might take action that might influence or impede
7 the completion of the distributions that are contemplated.
8 I don't know what more they could have said.

9 Okay. I think the disclosures on these points
10 were sufficient and the criticisms --

11 MS. SCHEUER: Understood, Your Honor.

12 THE COURT: -- the criticisms of individual due
13 diligence points are just substantive attacks, not
14 disclosure issues. And I don't think that this goes to
15 feasibility in the sense that term is used in the Bankruptcy
16 Code. There could be regulatory issues here, but the
17 debtors, I think, have tried not to eliminate that
18 possibility, you know, that maybe could have taken a
19 different approach and required you to put your proof on,
20 but nobody has tried to do that. They've tried to give you
21 your regulatory freedom to the extent that it makes some
22 sense here, but all they can do in that regard is say, look,
23 there are risks that people might interfere, regulators
24 might interfere, we can't guarantee what will happen.

25 But, you know, the only alternative to saying

1 something like that in this regulatory environment would be
2 to sit around for I have no idea how long and do nothing,
3 and wait until Congress and the competing regulatory
4 authorities sort out amongst themselves just who has what
5 authority over what aspects of this business and what kind
6 of authority they have. I have no idea how long that's
7 going to take and we can't do that in bankruptcy. The
8 Bankruptcy Code doesn't contemplate an endless period of
9 time, things have to be done. We have creditors who are
10 waiting and who, in the midst of all this uncertainty, have
11 no access to property in which they've invested, in some
12 case, their life savings.

13 So we have to take some kind of action, we have to
14 do something, and we can't just put everything on pause just
15 because we don't know for sure how the regulators will
16 eventually make up their minds on points that they seem to
17 have been debating for years. Okay?

18 I just don't think that that's really a disclosure
19 point here and I don't think it's a reason to criticize
20 business judgment. Things need to be done, the world needs
21 to move.

22 Okay, let's move -- I think the U.S. Trustee had
23 objections also on the disclosures about Binance and its
24 controls. Are you satisfied or do you have additional
25 points to make?

1 MR. MORRISSEY: Your Honor, if I may, I do have
2 additional points.

3 THE COURT: Okay.

4 MR. MORRISSEY: Your Honor, good morning, Richard
5 Morrissey for the U.S. Trustee. Although I do have
6 additional points to make, there will be some overlap
7 regarding disclosure and feasibility.

8 At the January 10th hearing on the debtor's
9 motions to enter into the asset purchase agreement with
10 Binance and for conditional approval of the debtor's amended
11 disclosure statement, we pointed out that in the wake of the
12 collapse of Voyager's prior deal with FTX that the creditors
13 wanted to know as much as possible about the new purchaser
14 as they could, not least to be assured that the painful FTX
15 experience would not be repeated in this case.

16 The creditors had reason to be especially
17 sensitive about the Binance transaction as Voyager was to
18 share their personal information, personal information that
19 Voyager worked so hard to protect at the beginning of these
20 cases with Binance.

21 Voyager's customers had questions. How stable is
22 Binance? Was the proposed purchaser in the crosshairs of
23 any government investigations? Would any intercompany
24 transactions at Binance impact the customers'
25 cryptocurrency? Was Binance.US truly independent of

1 Binance.com or Binance.Global?

2 As the Court has heard over the first two days of
3 this hearing, Voyager's customers still have such questions.

4 Now, to be sure, Your Honor -- and I'm talking
5 about the disclosure statement here -- if they looked hard
6 enough in various portions of the amended disclosure
7 statement, the customers could find answers to certain other
8 questions such as how their recoveries would be affected if,
9 for example, the litigation with respect to Voyager's
10 intercompany transactions went one way or another, or if
11 Alameda's claim against the debtors were allowed or
12 disallowed. They could also find --

13 THE COURT: You know, you're standing here telling
14 me that customers found the disclosures on these points
15 inadequate, I don't have a single customer who's taken that
16 position.

17 MR. MORRISSEY: Your Honor, I apologize if that's
18 what it seems that I said --

19 THE COURT: That's what you just said.

20 MR. MORRISSEY: -- that's not what I was trying to
21 say.

22 THE COURT: You just said that this is all stuff
23 that customers wanted to know, and that might be what you
24 think, but not a single customer has filed an objection on
25 that ground, not a single one, as far as I know.

1 MR. MORRISSEY: Okay. Your Honor, my point is
2 what is and what is not in the disclosure statement for any
3 parties in interest to discover.

4 One example, Your Honor, is that the customers
5 could find a description of Voyager's security protocol,
6 both in the amended disclosure statement and in the
7 declaration that was filed in connection with the debtor's
8 cash management motion.

9 THE COURT: I'm sorry, what is it, you think
10 Voyager should have disclosed its own security protocol?

11 MR. MORRISSEY: Well, no, Your Honor. As a matter
12 of fact, I'm saying that Voyager did. Voyager gave a
13 description in the disclosure statement regarding its own
14 security protocol, it did not give a description of
15 Binance's security protocol. And I'll get into that in just
16 a moment, if I may, Your Honor. The --

17 THE COURT: Didn't they say that Binance
18 maintained wallets at Amazon Web Services located in two
19 jurisdictions and didn't they talk about various
20 certifications that Binance had provided as to its
21 compliance with a number of different security standards?

22 MR. MORRISSEY: That was discussed, Your Honor, in
23 a combination of the declarations submitted shortly before
24 the hearing --

25 THE COURT: I'm pretty sure it was in the

1 disclosure statement.

2 MS. OKIKE: Yeah, it's in the disclosure
3 statement, Your Honor, it's Article 5(b)(1)(B).

4 THE COURT: I reread the disclosure statement in
5 preparation for this hearing and I remember seeing it there.

6 MR. MORRISSEY: But, Your Honor, what the debtor
7 provided here in the disclosure statement was assurances
8 about Binance. The disclosure statement was very
9 informative about Voyager's history both before and during
10 the pendency of the cases. It said a lot about where the
11 customers have been, but very little about where they've
12 been invited to go.

13 Your Honor, in a conventional sale -- and the
14 final approval of the sale is up for today as well, as it's
15 part of the plan, assets are exchanged for proceeds and the
16 latter has a reasonably equivalent value to the former.
17 Here, the 20 million or the maximum 35 million amount to far
18 less than the value of the assets.

19 The vast bulk of the sale involves the transfer of
20 the crypto held by Voyager to the Binance.US platform.
21 Although the crypto goes to Binance.US, the debtor's due
22 diligence cannot follow the crypto to Binance.US. Once the
23 crypto has been transferred, the matter is out of Voyager's
24 hands. Voyager's control of the asset is limited to either
25 the 20 or the 35 million, or whatever number in between may

1 eventuate.

2 The debtors assure the parties that Binance has
3 the wherewithal to consummate the asset purchase agreement,
4 but there's precious little information about Binance.US in
5 the disclosure statement to back up that assurance. Now, we
6 did hear testimony regarding that.

7 Also, as far as the mechanisms to protect the
8 cryptocurrency, we heard that from Voyager's witnesses and,
9 as Your Honor pointed out, there's something about that in
10 the disclosure statement --

11 THE COURT: Well, here -- what you just said is
12 really not so much an argument that there was a lack of
13 disclosure, but that there was -- they didn't kind of
14 incorporate all their declarations into the disclosure
15 statement itself to give a full explanation of all the
16 homework that they had done and intended to do that
17 supported the conclusions that they had reached --

18 MR. MORRISSEY: No --

19 THE COURT: -- that's not really a disclosure.

20 MR. MORRISSEY: Well, except that --

21 THE COURT: When does anybody ever do that in a
22 disclosure statement?

23 MR. MORRISSEY: Well, the -- a lot of the
24 information contained in the declarations and disclosed in
25 the live testimony should have been in the disclosure

1 statement before the ballots went out, so that the people
2 voting could make a more informed decision as to what they
3 were voting on.

4 And, Your Honor, I'd like to interject one point.
5 It's been repeated many times over the last two days and
6 even in the press about the fact that 97 percent of the
7 creditors supported the plan and they had overwhelming
8 support among the creditors. As I said the other day, Your
9 Honor, six percent of the creditors voted on the plan; I
10 don't know why the 94 percent did not, but the overwhelming
11 majority of the creditors did not.

12 Having said that, Your Honor, I do concede, as I
13 did the other day, that what Your Honor has to consider in
14 terms of whether there's adequate support is in fact the
15 votes that were actually cast, not the ones that were not
16 cast. So we understand that, but I just want to make sure
17 that everyone is clear that there is not an overwhelming
18 support for the plan among the entire creditor body.

19 THE COURT: By the same token, I heard a couple of
20 customers complain about Binance and say they didn't want to
21 go to Binance, only a few. So, out of the thousands of
22 customers who voted and the, what, million customers that
23 exist, I have less than a handful of customers who objected
24 to the proposal of having the debtor deal with Binance here,
25 recognizing that we've also tried to set it up so that

1 customers who don't want to have Binance accounts don't have
2 to have Binance accounts and are free to elect not to have
3 that; right?

4 MR. MORRISSEY: Yes, Your Honor, and there's also
5 the toggle to the other plan, which we do recognize.

6 THE COURT: So nobody is forced to be a Binance
7 customer who doesn't want to be a Binance customer.

8 MR. MORRISSEY: That is correct, Your Honor.

9 MS. PROVINO: (Indiscernible) --

10 THE COURT: Who is speaking?

11 MS. PROVINO: I'm sorry. This is Lisa Provino,
12 pro se. I just wanted to support something that Mr.
13 Morrissey is saying that is quite --

14 UNIDENTIFIED SPEAKER: (Indiscernible) --

15 MS. PROVINO: -- which is quite important. I
16 found yesterday that -- and the reason -- this is on his
17 first comment about us not commenting on some of the
18 documents, Your Honor, there have been documents on Stretto
19 that have been deleted. Please note for the record that
20 Docs. 66, 70, 149, 219, 187, 184, 165, 359, 380, 381, 382,
21 497 (indiscernible) 607, 359, and 1049 documents have been
22 deleted from Stretto.

23 So it has been very challenging for us, as we have
24 mentioned multiple times, to keep up, but it's even worse
25 when the documents have been deleted. And so, if they have

1 been deleted and we have not been able to respond, I want
2 for the Court to know that it's unfair, and we did support
3 what -- excuse me -- what Mr. Morrissey has just stated.

4 THE COURT: Okay.

5 MS. PROVINO: So --

6 THE COURT: You're not --

7 MS. PROVINO: -- meaning that (indiscernible) --

8 THE COURT: You did get the disclosure statement;
9 right?

10 MS. PROVINO: No, not the one that -- which one
11 are you talking about, sir? The one that you mentioned that
12 we didn't respond to that Richard Morrissey just brought up.
13 Which disclosure statement are you speaking of? As I
14 mentioned, there were multiple documents --

15 THE COURT: There is no --

16 MS. PROVINO: -- deleted off of Stretto and I'm
17 very upset about that.

18 THE COURT: There was a large disclosure statement
19 submitted in connection with the request for confirmation of
20 the plan.

21 MR. MORRISSEY: Your Honor, if it may help, I do
22 remember one ECF document number for the amended disclosure
23 statement, I believe that's the one we objected to, it was
24 Document Number 863 on the docket and I hope that is still
25 there.

1 THE COURT: But it didn't have to be, it was --

2 MS. PROVINO: That one --

3 THE COURT: -- it was mailed out, right, Ms.

4 Okike?

5 MS. PROVINO: I went through -- and then I wanted
6 to mention something else as well.

7 THE COURT: Well, you should have gotten a big
8 document in the mail.

9 MS. PROVINO: Sir, I did not. I have gotten
10 nothing in the mail.

11 MS. OKIKE: Email, email.

12 THE COURT: Email, excuse me, in the email.

13 MS. PROVINO: On Document 863? I'm sorry, which
14 are you speaking of? Please clarify for me.

15 THE COURT: The disclosure statement that we're
16 talking about should have been sent to you by email in
17 approximately mid-January.

18 MS. OKIKE: Along with a ballot --

19 MS. PROVINO: No, I did not receive it.

20 MS. OKIKE: -- for you to exercise your vote.

21 THE COURT: Along with a ballot.

22 MS. PROVINO: No, if you remember, this goes to
23 the point -- another point of Mr. Morrissey that 94 percent
24 of the people didn't vote. May I comment again that 3506
25 people were blocked from voting? Yes, I understand that we

1 got an email about the ballot, but, if you remember
2 correctly, there were several of us that had complained.

3 And we went to extreme lengths, we did call Mr.
4 Morrissey, as well as many other regulatory bodies that we
5 possibly could, in addition to the debtor. So I just want
6 to see things for the record because --

7 THE COURT: Let me ask you to hold -- let me ask
8 you to hold on those complaints while we just finish with
9 Mr. Morrissey's comments about the disclosures. Okay? And
10 then we'll come back to you.

11 MS. PROVINO: That's fine, but I just wanted you
12 to know about we support what he just said and I need you to
13 know that, sir, that's all --

14 THE COURT: I understand.

15 MS. PROVINO: -- and especially about the
16 documents, I'm very upset about that as well.

17 THE COURT: Okay. Go ahead.

18 MR. MORRISSEY: Thank you, Your Honor.

19 (Pause)

20 MS. OKIKE: Your Honor, just to address that
21 point. We understand from Stretto that the docket numbers
22 referenced were removed because they included customer PII.

23 MS. PROVINO: But that was never mentioned to us
24 at all, so we could have at least downloaded those.

25 (Background noise)

1 THE COURT: All right, a lot of people have open
2 lines. Please mute your line unless you have permission to
3 speak. Okay?

4 MR. MORRISSEY: Thank you, Your Honor.

5 Your Honor, although Voyager's history and actions
6 are well described in the disclosure statement, when it
7 comes to information about Binance.US, the disclosure
8 statement is more of a statement of assurance.

9 The debtors have said that the objectors have not
10 produced any evidence to counter their assurances about
11 Binance, but it is not the objectors' obligation to make
12 disclosures about Binance, it is the debtors' job to do so
13 and it's a job that the debtors have not done.

14 THE COURT: What should they have said?

15 MR. MORRISSEY: Your Honor, they had a lot of
16 communications between the debtors on one side, and perhaps
17 the committee on the same side, and Binance on the other and
18 they got a lot of assurances from them.

19 Again, I understand that these are restructuring
20 professionals and not specifically crypto experts, but they
21 got the assurances from them, including the fact that there
22 are third parties, independent third parties who have
23 reviewed the security protocols. But the information they
24 got from them was walled off from the creditor body because
25 there was not -- the substance of the information was not in

1 the disclosure statement.

2 THE COURT: What information did they get, the
3 substance of which was not in the disclosure statement?

4 MR. MORRISSEY: They were -- they got assurances,
5 Your Honor, they got assurances that they had the financial
6 wherewithal to --

7 THE COURT: That's in the disclosure statement.

8 MR. MORRISSEY: That they did have the
9 wherewithal?

10 THE COURT: Yeah.

11 MR. MORRISSEY: Yes, it was a -- it was a small
12 comment.

13 And just to put it in perspective, Your Honor,
14 Binance itself, there were three pages out of the 98 in the
15 disclosure statement dedicated to Binance. This plan, Your
16 Honor, is all about Binance, a lot more than it's about
17 Voyager. It's all about what Binance can do holding and
18 protecting the assets on the platform because Voyager, as I
19 said earlier, is transferring the bulk of the assets to
20 Binance.

21 One last point, if I may make, about due
22 diligence, Your Honor. We learned that the debtor's
23 restructuring professionals had reviewed the information
24 that they received from Binance, but because they were not
25 crypto experts, they -- meaning the debtors themselves,

1 their restructuring professionals -- were unable to make an
2 independent determination regarding the security protocols.
3 They got a showing, they were satisfied with the showing,
4 obviously, but they didn't make their own determination.

5 And that's why I said, Your Honor, this is more of
6 a statement of assurances than a disclosure statement and
7 that's where I think that the debtors fell short.

8 Your Honor, there are other issues that we have,
9 but, again, I'll defer to other parties and take those on
10 later, such as releases, exculpations, et cetera.

11 THE COURT: Right.

12 MR. MORRISSEY: Thank you, Your Honor.

13 MR. GOLDBERG: Your Honor, if I may be heard?
14 Adam Goldberg of Latham & Watkins on behalf of Binance.US.
15 I'd like to respond quickly to one point that Mr. Morrissey
16 made about the voting and the questions Your Honor has about
17 who voted and why.

18 I was doing some math, looking at the voting
19 declaration, which is at Docket Number 1127, to think about
20 that, and what it shows is that \$541 million of claimed
21 value voted in favor of the plan out of the customer class,
22 which in the disclosure statement is estimated at 1.763
23 billion. By my math, that's a little over \$9,000 per claim
24 of the people who voted in favor. There was only 10 million
25 in claims that voted against the plan and by my math that

1 was a little over 5,000 per claim who voted against. The
2 remaining over 900,000 people who did not vote, the
3 remaining claims pool, would be about \$1900 per claim.

4 And so what that math shows, Your Honor, is that
5 the people with the greatest interest in this estate voted
6 in favor of the plan.

7 And, Your Honor, this plan, my client's goal, the
8 debtor's goal, as I understand it, is to deliver
9 cryptocurrency to customers as quickly as possible, and
10 that's why we believe that the customers voted
11 overwhelmingly in favor and those with the greatest
12 interests did so.

13 Thank you, Your Honor.

14 MR. HENDERSHOTT: Your Honor, this is Tracy
15 Hendershott, pro se creditor, may I approach the podium?

16 THE COURT: In a minute, Mr. Hendershott. We've
17 got the committee counsel already standing here ready to
18 argue, so we'll hear the committee counsel first.

19 MR. HENDERSHOTT: Thank you, sir.

20 MR. EVANS: Your Honor, Joseph Evans from
21 McDermott Will & Emery on behalf of the committee. I'd like
22 to share a few points and I'll try not to repeat things that
23 have already been said. We think it's important for the
24 creditors to know what the committee's role has been and
25 what we've done in connection with this deal.

1 The committee supports the plan. According to the
2 experts, the Binance deal will give customers incremental
3 value of \$100 million.

4 Based on the substantial diligence that we've done
5 concerning the Binance deal, the information provided and
6 the representations made by Binance, the committee supports
7 a plan which includes the Binance deal and the opportunity
8 to toggle. We believe that it's the best available option
9 to get the most crypto back as quickly as possible.

10 One reason why the committee supports the plan is
11 because of the significant protections that the committee
12 negotiated for and obtained in the APA. For example, the
13 Binance.US deal initially contemplated transferring all
14 Voyager crypto to Binance.US before Voyager creditors
15 onboarded with Binance.US. This would mean that Voyager
16 customers' crypto would have been exposed to Binance.US
17 risks for a period of time before they were able to
18 withdrawal. The committee refused that deal.

19 The committee negotiated for and Binance agreed to
20 have customer crypto transferred on a weekly basis only
21 after customers are onboarded with Binance. So, if they
22 choose to withdraw and not be Binance customers, the
23 exposure to Binance will only be for a matter of days.

24 Those provisions are contained in Section 2.4 of
25 the APA.

1 There are also provisions that we negotiated for
2 that made clear that when Voyager customer crypto goes to
3 Binance that Voyager customer crypto remains property of the
4 estate until the customers have the ability to withdraw.
5 And there is also the fiduciary out, which has been the
6 subject of a lot of the testimony, though, before Your
7 Honor.

8 The second reason why the committee became
9 comfortable with the Binance deal was because of the
10 significant amount of due diligence conducted by the
11 committee, the debtors and their professionals.

12 The committee interviewed Binance.US executives on
13 these issues on seven separate occasions. And, as this
14 Court heard from experts from BRG and Moelis, the Binance
15 deal is the best available deal for creditors. So the
16 committee supports a plan which includes the Binance deal.

17 There was a number of representations that we've
18 all heard that were important. The crypto is held on a one-
19 to-one reserve basis; the company segregates the company's
20 assets from customer assets; CZ, Binance.Global, anyone
21 outside of Binance.US cannot take customer crypto out of
22 Binance.US; and the company does not lend or re-hypothecate
23 the customer assets.

24 There were also a number of press releases,
25 Tweets, congressional letters. We've also diligenced those,

1 that diligence is ongoing.

2 With respect to one important report from Reuters
3 on February 16th, 2023, we've done diligence and we were
4 assured that; one, Merit Peak does not withdraw a customer
5 fee out of crypto; Merit Peak nor any other market maker had
6 the ability to withdraw a customer fee out of crypto; and
7 Merit Peak no longer conducts any activity at Binance.US.

8 And we'd like to take a moment to speak about the
9 SEC's position. With respect to the SEC, the SEC staff
10 statements on Thursday, Friday, and this morning do not
11 change the committee's position. We were particularly
12 unmoved by the SEC staff statement this morning that we are,
13 quote, "on notice" of some unspecified regulatory violation;
14 we are not.

15 On Friday, the SEC attempted to clarify its
16 position with respect to its objection. In its
17 clarification, they said on four separate occasions that
18 these were statements of the staff and not the Commission.

19 Why does that matter? Well, for one thing, the
20 staff cannot bring lawsuits without approval from the
21 Commission. The staff cannot initiate an administrative
22 proceeding without Commissioner approval.

23 In a statement from then-Chairman Jay Clayton, he
24 stated that, quote, "The Commission's long-standing position
25 is that all staff statements are nonbinding and create no

1 enforceable legal rights or obligations of the Commission or
2 other parties."

3 In short, this statement from the SEC staff about
4 what they believe is not something that we can meaningfully
5 consider when weighing against \$100 million of customer
6 value.

7 The staff stated that the VGX, quote, "has the
8 attributes of a securities transaction." So even the staff
9 is not willing to say that VGX is a security.

10 With respect to Binance, they say that Binance.US
11 is operating as an unregistered securities exchange. Well,
12 what does that mean? You could be operating an unregistered
13 securities exchange because one token that you're selling is
14 a security, there's ten tokens that you're selling as a
15 security, there's a hundred tokens that you're selling as a
16 security. We don't know what they're thinking and they're
17 not willing to tell us.

18 Let's say, for example, they think BUSD stablecoin
19 is a security. Okay. There was a statement a few weeks ago
20 from Paxos indicating that they were being investigated for
21 BUSD. Okay. The committee and its professionals, the
22 debtors and its professionals, did not consider the Treasury
23 and BUSD in connection with their valuation of whether
24 Binance.US can close the deal; they have enough cash in the
25 bank to do so.

1 When you look at the recent actions against crypto
2 exchanges and settlements, on January 19th, the SEC settled
3 charges with Nexo for \$22.5 million; on February 9th, the
4 SEC settled with Kraken for \$30 million. Those amounts,
5 even multiples of those amounts, would not impact
6 Binance.US's ability to close the deal based on the
7 diligence we've performed.

8 The SEC's stated purpose is to protect investors.
9 The SEC's refusal to take a firm position here stands to
10 harm retail investors. The SEC staff is asking the Court,
11 the UCC, and the debtors to eradicate \$100 million of
12 creditor recovery based on a position that the staff members
13 cannot even get the Commission to support. They are saying
14 we are on notice that there may be a regulatory violation.

15 From where I sit, the SEC staff statement appears
16 to be designed to intimidate the professionals and the
17 fiduciaries to refuse to go forward with the plan, hoping
18 that we will be afraid of having a decision called into
19 question and we will choose to instead erase over \$100
20 million of customer recovery. We are not going to do that.

21 We have had one goal from the outset of this case:
22 get as much crypto back to customers as quickly as possible.
23 The SEC's refusal to take a firm position does not alter
24 that goal. The committee supports the plan.

25 THE COURT: All right. Thank you.

1 Mr. Hendershott, it's your turn.

2 MR. HENDERSHOTT: Yes, sir, thank you. I just
3 want to tag onto Mr. Morrissey as a representative of DOJ
4 and address comments that you've made, as well as we've
5 heard throughout this entire trial comments from counsel to
6 the debtors-in-possession that by not hearing from a
7 plethora of creditors that means agreement with what is
8 going on.

9 I understand the counsel for the debtors, they're
10 being paid to advance their agenda and that's why they would
11 promote that false narrative, but I know, Your Honor, I
12 don't believe you have an agenda. And I just want to call
13 out that it's an undue burden, you know, to expect creditors
14 to miss work, you know, spend all of their nights and
15 weekends, you know, reading thousands of documents.

16 The Department of Justice is the voice of
17 creditors here. Every single objection and motion that the
18 Department of Justice has pushed throughout this trial,
19 starting with trying to object to the KERP, which actually
20 had 2,000 creditors documented as going against it, and that
21 information was held from me, Your Honor, when you
22 specifically asked what is the creditor perspective of that.

23 They also try to protect us with data privacy
24 ombudsmen. And you've heard the handful of creditors that
25 have sacrificed their work relationships and they're

1 attending these meetings at personal sacrifice.

2 Everyone is in agreement with the Department of
3 Justice and it's unfair to state that if thousands of
4 creditors do not invest the time for every nuance of this
5 trial that he does not speak on our behalf. And I just
6 wanted to call that out to your attention for your
7 consideration.

8 THE COURT: Okay. Just to make clear, Mr.
9 Hendershott, today there are substantive issues that I -- as
10 to whether the plan complies with the requirements of the
11 Bankruptcy Code and, of course, I'll hear everybody's
12 testimony about that. There's also the issue for the final
13 approval of the disclosure statement and my comments about
14 not having a creditor complaint about the disclosure
15 statement I think reflected the fact that the information
16 that Mr. Morrissey says should have been in that lengthy
17 document, but wasn't, I said I hadn't gotten any complaints
18 from creditors to that effect.

19 Now, what you just said really is to the effect
20 that creditors shouldn't have to read all of that, but that
21 doesn't really support Mr. Morrissey's objection because
22 what Mr. Morrissey is saying is that you should have read
23 all of it and that there should have been even more in it
24 for you to read, which seems different from what you just
25 said to me.

1 MR. HENDERSHOTT: I apologize, sir, if I misspoke,
2 but that was not my intent. I never intended to say
3 creditors should not have read the disclosure statement. I
4 was certainly -- my intent was to call out that I wished
5 more credence of Mr. Morrissey and his department
6 representing and speaking on behalf of the creditors was
7 taken into consideration.

8 Thank you.

9 MS. PROVINO: Exactly. This is Lisa Provino, pro
10 se again, I support that last statement. And we are reading
11 the documents, Your Honor, that's why I brought up the
12 deletion of the Stretto documents just for the record.

13 THE COURT: Okay.

14 MS. RYAN: Your Honor, this is Ms. Ryan with the
15 Texas Attorney General's Office. We did have a disclosure
16 statement objection and if I may address it now?

17 THE COURT: Yes.

18 MS. RYAN: So, in reading the disclosure
19 statement, the information pertinent to customers was not
20 easily laid out for the consumers to see and digest. And
21 one particular segment of the information that was buried is
22 these Alameda claims and what will happen to the customers,
23 the consumers if the debtor is not successful in fighting
24 these claims.

25 And I don't think any of the creditors objected to

1 that because they didn't see it, it wasn't there. It was
2 hard to tease out.

3 And so, in that regard --

4 THE COURT: The information --

5 MS. RYAN: Yes, sir.

6 THE COURT: -- the information about the effect of
7 the Alameda's claims that you say should have been in the
8 disclosure statement, you cite that information and it comes
9 from the disclosure statement. The very information that
10 you say should have been in the disclosure statement is
11 information you took from the disclosure statement.

12 MS. RYAN: You're right, Your Honor. My point is
13 it was buried in this disclosure statement.

14 When we're working with this many consumers -- I
15 do lots of work for consumer protection in bankruptcy --
16 generally, we make those things easy to read and easy to
17 find and in this disclosure statement they just aren't. In
18 fact, on the page that I would assume most consumers would
19 look at, there is no reference to the drastic cut of the
20 returns --

21 THE COURT: I don't --

22 MS. RYAN: -- if Alameda is successful.

23 THE COURT: -- I don't agree with you. You know,
24 there are so many things that the Bankruptcy Code requires
25 to be in and practice requires to be in a disclosure

1 statement, and then so many additional things that the
2 debtor added because of objections and criticisms and
3 comments that were received in January, that to say that all
4 of that somehow should have been done in an easily-read-and-
5 digestible form, you can't do it, you just can't.
6 Disclosure statements necessarily are long; they necessarily
7 have things in different sections. You can't take
8 everything that every individual thinks is important and put
9 it on page 1 because there's 180 pages of things that
10 everybody would want to be on page 1. You just can't do it.

11 It is in there and I'm not going to say that it
12 was inadequate just because you don't think it had as much
13 highlighting or was as easy to find as you think it should
14 have been.

15 MS. RYAN: Your Honor, I understand your point and
16 I still object. I do believe that that should have been
17 highlighted better for the consumers and it wasn't. And I
18 think an effect of that lack of -- that lack of highlighting
19 for the consumers is the fact we have no idea of what a
20 bottom return number would be, it's been quoted in the
21 disclosure statement as low as 24 percent, it's been quoted
22 in testimony as high as 48 percent.

23 The consumers have really no understanding of the
24 bottom of their return and I think the disclosure statement
25 was also very inadequate in that manner.

1 THE COURT: Well, because some of the
2 distributions will be in the form of cryptocurrencies and
3 because cryptocurrency values can fluctuate quite widely,
4 there is no practical ability to be extremely precise in
5 what people will actually get, but the debtors did offer an
6 analysis in the liquidation analysis of specifically what
7 recoveries would be under the financial transactions, what
8 recoveries would be if they toggled to the other plan, and
9 what recoveries would be if instead they were to be under
10 Chapter 7.

11 And they did that, frankly, I think, as precisely
12 as circumstances permitted. Given the nature of this
13 business, given the nature of some of the uncertainties, and
14 given the nature of the assets, I don't know how anybody
15 could have been any more precise than they were.

16 MS. RYAN: Your Honor, I believe they could have
17 added one more column that said recoveries if Alameda is
18 successful, and that would have given an estimated bottom
19 number and that was not disclosed.

20 THE COURT: But it's in a footnote on the same
21 page, isn't it?

22 MS. RYAN: Your Honor, it is -- the footnote on
23 that page does not tell us any type of percentage and it
24 doesn't actually point to the consumers' claims or
25 acountholders' claims, it's in a general section at the

1 top. And so I don't think that it was meaningful for the
2 accountholders.

3 THE COURT: By the way, I know you were heard when
4 we considered the initial approval of the disclosure
5 statement in January, did you raise this issue then?

6 MS. RYAN: Honestly, Your Honor, I don't remember.

7 THE COURT: Okay.

8 MS. PROVINO: What date was that? I can check.
9 This is Lisa Provino. I wrote notes.

10 THE COURT: In January, I don't remember the date.

11 MR. MORRISSEY: Your Honor, Richard Morrissey for
12 the U.S. Trustee. Actually, I raised the issue and a
13 footnote was added, and my questions or comments were very
14 similar to Ms. Ryan's that they were hidden in -- certain
15 things were hidden in different parts of the disclosure
16 statement at the time. I don't remember, however, whether
17 Ms. Ryan chimed in.

18 THE COURT: But we discussed it and the change we
19 made is what I approved, right?

20 MR. MORRISSEY: Yes, Your Honor.

21 THE COURT: I don't think anybody complained that
22 the change we made didn't adequately address the objection.

23 MR. MORRISSEY: Your Honor, there's another aspect
24 of that as well. The intercompany transfers, the litigation
25 on that, will also affect possibly the distribution.

1 THE COURT: One at a time.

2 MR. MORRISSEY: Yes.

3 THE COURT: So, in terms of the Alameda, you know,
4 I vaguely remember some issues coming up and we put this
5 information in specifically to address them, and my
6 understanding is that that took care of the objection and
7 that there -- you know, to say now that it just wasn't
8 highlighted or was in the wrong place, I don't think that's
9 sufficient for me to find that the disclosure statement was
10 inadequate. Okay?

11 MS. RYAN: Okay, Your Honor. I had one other
12 issue that I wanted to raise now and then when we come to
13 the releases and exculpation issue, I'll save my arguments
14 for then.

15 Texas does have concerns with the security on
16 Binance's side and we believe that Texas is an unsupported
17 jurisdiction whose customers can't go over to Binance right
18 now. Their personally identifiable information should not
19 be transferred to Binance.

20 I understand Binance bought the customer list and
21 so information such as emails, so they can market once they
22 are licensed in Texas, that's fine, that should go over, but
23 bank accounts and other personally identifiable information
24 transferring I think is not appropriate in this case.

25 THE COURT: Okay.

1 MS. RYAN: And then, finally, on the feasibility
2 of the plan, Texas is concerned with the lack of information
3 on Binance's wherewithal. Binance abandoned their
4 Department of Banking license application after a year for
5 failure to give us financial information that was necessary.
6 Binance's documents --

7 THE COURT: Wasn't that --

8 MS. RYAN: -- that were just filed --

9 THE COURT: -- wasn't that a refusal -- in Texas,
10 wasn't that a refusal to give you financial statements of
11 its parent company, isn't that what led to the --

12 MS. RYAN: Your Honor, I would need to go back and
13 look at the abandonment letter. Regardless, it is a
14 qualification to be licensed in Texas and they would not
15 provide us the information.

16 THE COURT: But --

17 MS. RYAN: Secondarily, the --

18 THE COURT: -- as I recall -- as I recall your
19 prior submissions on this point, Binance.US gave you and was
20 willing to answer your questions about its finances, but
21 declined to give you information about the finances of its
22 parent company; right?

23 MS. RYAN: I again would have to go back and
24 review the documents, but the point is Binance doesn't want
25 to disclose financial information when regulators require it

1 and, whether it was Binance.US or Binance.com, it was a
2 requirement to be licensed in Texas and they refused to do
3 so.

4 Likewise, in the documents uploaded to support the
5 Binance due diligence done, no mention of Binance.US's
6 wherewithal is mentioned in there, none. All we have is
7 hearsay testimony or testimony that they relied upon X, Y,
8 Z, and we've never seen X, Y, Z. And so we actually are
9 very concerned with Binance's financials as there's very
10 little to no information in the record about it.

11 And that's all of my argument for now, Your Honor.

12 THE COURT: If Binance doesn't have the 20 million
13 or 35 million or whatever it's supposed to pay at closing,
14 then the deal will be done, right?

15 MS. RYAN: Correct.

16 THE COURT: So --

17 MS. RYAN: Well, that --

18 THE COURT: -- what do we need to --

19 MS. RYAN: -- my -- Your Honor, my big concern is
20 -- you know, 25 or 30 million, they can probably pay that, I
21 haven't seen any proof that they could -- my concern is, six
22 weeks after the sale closes Binance ends up in bankruptcy
23 and all of the accountholders that transferred over are once
24 again in this same position.

25 We don't have evidence that Binance won't end up

1 in a liquidation like FTX did, Your Honor. We don't have
2 evidence as to their financials --

3 THE COURT: We don't have any --

4 MS. RYAN: -- to make sure they won't.

5 THE COURT: We don't have any evidence that they
6 will, do we?

7 MS. RYAN: Your Honor, it's the debtor's burden to
8 prove that Binance is -- that it is a good business judgment
9 to sell to Binance and right now I don't see anything that
10 proves Binance isn't going to end up in bankruptcy too
11 because we have no financial information.

12 THE COURT: But when you say you don't see enough
13 to prove it, you're just saying that you wouldn't make the
14 same judgment. You don't trust --

15 MS. RYAN: No, I don't --

16 THE COURT: -- the evidence that the debtors have
17 relied on?

18 MS. RYAN: No, that's correct because the debtors
19 haven't shown us what they relied on for financial
20 information. They've testified as to hearsay and they've
21 testified that they relied on some documents, which nobody
22 has ever seen except them. And so, no, I don't trust that
23 evidence, Your Honor.

24 THE COURT: Okay. Anything else --

25 MS. RYAN: Thank you.

1 THE COURT: -- Ms. Ryan?

2 MS. RYAN: Not at this time, Your Honor. I will
3 reserve some argument for the releases and exculpation
4 provisions. Thank you.

5 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
6 & Watkins on behalf of Binance.US, if I may respond to a few
7 points.

8 First, on the personal information point, we are
9 working on coming back to Your Honor on that issue, but I
10 think, generally speaking, this is a fundamental and core
11 aspect of the deal that is the basis for the economic
12 transaction embedded in the \$20 million purchase price.

13 On the point of the abandonment of the application
14 as Texas asserts, Binance.US completely disagrees with that
15 characterization. In Binance.US's view, they made every
16 effort to provide financial information that was requested
17 of Texas to them. Texas found that that was not sufficient
18 and deemed the application withdrawn. Binance is working on
19 providing -- on filing a new application, which we expect to
20 be done as soon as possible.

21 And Binance.US continues to make every effort to
22 work with the State of Texas to resolve its issues to make
23 it -- take it out of the category of being an unsupported
24 jurisdiction, as we have done with Vermont.

25 On the question of feasibility and Binance's

1 financial wherewithal to perform the transaction, I think
2 Your Honor has correctly found that the question of
3 feasibility is -- that that is not a question of feasibility
4 in this case; it is a question of the debtor's business
5 judgment. Binance.US provided bank statements to the
6 debtors as the basis for their business judgment. The State
7 of Texas, if they distrusted that information and the
8 debtor's diligence, had every opportunity to conduct
9 discovery on Binance.US and they did not do so.

10 In our view, the debtor's business judgment is
11 correct in this case because the Binance.US transaction does
12 what we have set out to do from day one of our involvement
13 in this process going back to last year and that is deliver
14 cryptocurrency to customers as quickly as possible.

15 Thank you, Your Honor.

16 THE COURT: All right. Anything --

17 MS. DIRESTA: Your Honor, I'm a pro se creditor,
18 am I allowed to speak to the security issues that have been
19 brought up thus far or do I have to wait for a different
20 time?

21 THE COURT: Go ahead. Who is this?

22 MS. DIRESTA: I am Gina DiResta; I'm a pro se
23 creditor. And I read the Binance officer's certificate and
24 one of the things -- or a couple of things that -- let me
25 just go to it -- a couple of the things that they mention,

1 for example, is like it says only employees of the company
2 are able to -- this is number 5 -- only employees of the
3 company are able to move or withdraw the customer assets
4 from the company's platform.

5 So there's that portion about my assets and then I
6 think it's number 8 where they talk about access to my
7 personal identifiable information. It doesn't say anything
8 about whether my assets or my personal information is in the
9 U.S., like is it being, you know, held here in the U.S., or
10 is it being possibly held say like in China or something
11 like that?

12 So that does concern me that it doesn't say
13 anything like that.

14 And the other concern that I have is it says, you
15 know, only the company's employees or in the security
16 section it says only the authorized person, but, you know,
17 there are a lot of companies that kind of comingle their
18 employees. So there's nothing in there that says absolutely
19 no one at Binance.com, which is the global (indiscernible)
20 has access to any of my funds or personal information at
21 Binance.US.

22 So those things I find concerning from a security
23 perspective.

24 THE COURT: All right. Who wishes to address that
25 objection?

1 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
2 & Watkins on behalf of Binance.US.

3 We are -- I think we have provided ample diligence
4 to the debtors on these issues that evidences the security
5 of the information and currency, cryptocurrency that is held
6 by Binance.US. I am working with my client in order to be
7 in a position to respond to the Court directly about where
8 data is held, which would be in accordance with the
9 Binance.US privacy policy, which is available online on the
10 Binance platform.

11 THE COURT: What does the privacy policy say about
12 where information is held?

13 MR. GOLDBERG: I'm working on that right now, Your
14 Honor.

15 THE COURT: Okay.

16 MR. GOLDBERG: I can understand --

17 MS. DIRESTA: And I'm sorry, just --

18 MR. GOLDBERG: -- that that is held in the United
19 States, Your Honor.

20 THE COURT: Okay.

21 MS. DIRESTA: What is held in the U.S.? Is it my
22 personal information or also my crypto assets?

23 MR. GOLDBERG: The response I just received is
24 that I understand personal data is held in the United
25 States. Cryptocurrency is held in the United States and in

1 Japan. So it's disclosed in the disclosure statement.

2 MS. DIRESTA: And what about, you know, the
3 terminology of the company's employees and, you know, let's
4 just use CZ as an example. CZ might be right now an
5 employee of Binance.com, but who's to say that at some point
6 he doesn't be considered an employee of Binance.US, and so
7 then he has access to my stuff. And now, you know, then
8 Binance.com and Binance.US aren't independent like they
9 claim they are.

10 THE COURT: Is CZ an employee of Binance.US and
11 does he have access to transfer customer assets off the
12 Binance.US platform?

13 MR. GOLDBERG: Your Honor, CZ is the ultimate
14 beneficial owner in majority of Binance.US, not the
15 exclusive owner. I can't get into the security protocols in
16 detail in an open proceeding for security reasons. But my
17 understanding is that one individual would not be able to
18 cause the transfer of customer funds off of the U.S.
19 platform.

20 MS. DIRESTA: But my question isn't how many
21 individuals can cause a transfer. My question is can
22 Binance.com employees at some point then be considered
23 Binance.US employees, and therefore, someone like CZ now has
24 access to not just my crypto, but my personal information,
25 when they're supposed to be completely independent.

1 To me, independent means no employee of
2 Binance.com ever touches anything to do with Binance.US.

3 MR. GOLDBERG: Your Honor, I can report to the
4 Court that CZ is not an employee and has no access to
5 personal information of customers or cryptocurrency of
6 customers on the Binance.US platform. I think in terms of
7 the details of the division between Binance.US and
8 Binance.com, they are separate companies. Binance.com does
9 not own Binance.US. They are separate legal entities with
10 separate governance structures. And I think the Debtor's
11 diligence should suffice to satisfy the statutory
12 requirements for their business judgment to go forward with
13 this deal.

14 MS. DIRESTA: But the only person -- the only
15 employee you addressed is CZ because I gave him as an
16 example. But what about all of the other employees, that no
17 Binance.com employees have access to Binance.US assets and
18 customer information; is that correct? That no employees
19 whatsoever, not just CZ.

20 MR. AZMAN: Your Honor, Darren Azman for the
21 committee.

22 While Mr. Goldberg looks for it, I think one thing
23 to remind the Court, at least as it relates to crypto and
24 creditors on the phone is, and this is by design, right, the
25 customers have two options here. They can go (indiscernible

1 - 12:42:38). And even if they do go with Binance, they can
2 pull their crypto off of the platform immediately. The
3 second that it's distributed and hits their account.

4 MR. GOLDBERG: Your Honor, I would say two things.
5 One, the officer certificate which has been filed in the
6 Court, it says that only employees of the company are able
7 to move or withdraw customer assets from the company's
8 platform.

9 In addition to Mr. Azman's points, no one is
10 required to sign up to the Binance.US platform. If they
11 don't want to be a Binance.US customer, they can have their
12 crypto liquidated and receive cash.

13 THE COURT: The question was are there employees
14 of Binance.US who have access to the cryptocurrencies and
15 the power to move it, who are also officers or employees of
16 Binance.com?

17 MR. GOLDBERG: Your Honor, my understanding is
18 that that is not the case.

19 THE COURT: Okay.

20 MR. GOLDBERG: In terms -- I assume Your Honor
21 meant that there would be officers of Binance.com who could
22 move assets, I believe you may have misspoken. You said
23 Binance.US officers.

24 THE COURT: Well, what I meant was, are there
25 people who do have that power because they are employees of

1 Binance.US, who are also officers or employees of
2 Binance.com?

3 MR. GOLDBERG: Your Honor, I understand my
4 client's listening in and reports no.

5 THE COURT: Okay.

6 MR. GOLDBERG: Thank you, Your Honor.

7 MS. DIRESTA: Did I hear him correctly, Your
8 Honor? He said no employees of Binance.com has access to
9 anything in -- with Binance.US?

10 THE COURT: I believe that is what he said. He
11 said that the people who are employees at Binance.US, who
12 have access to and the ability to transfer cryptocurrency,
13 are not officers or employees of Binance.com.

14 MR. GOLDBERG: That's correct, Your Honor.

15 MS. DIRESTA: Okay. And then to the point that
16 the UCC just made about how customers can go to Binance and
17 immediately remove their assets, I understand that. But my
18 personal information still ends up with Binance. So I do
19 still have that concern, regardless of whether I can remove
20 my assets immediately. And also, what system does
21 Binance.US share with Binance.com? Because I think the
22 comingling of systems is not safe and secure. Whether
23 that's regarding my crypto assets or my personal
24 information.

25 THE COURT: Well, I'm not sure, you know, we're

1 past the evidentiary stage. We're addressing objections
2 that have actually been made. On this particular point, did
3 you make an objection about this? How does this relate to
4 one of the objections that's actually been made?

5 MS. DIRESTA: Just related to security issues, and
6 that was being talked about right now.

7 THE COURT: And it's -- you want to know what
8 contract arrangements Binance.com and Binance.US may have?

9 MS. DIRESTA: What systems do they share? Because
10 it's -- let's say they share a system that then, you know,
11 can make them get access to my crypto or my personal
12 information, you know, even if it's not intentional or
13 inadvertently. I just don't know how secure that is, if
14 they might be sharing systems.

15 THE COURT: I'll give Binance a chance to give you
16 a quick answer to that, but I think we've strayed -- we have
17 so much to accomplish today in terms of the objections that
18 have actually been filed, and I think that strays into new
19 territory, to tell you the truth.

20 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
21 & Watkins on behalf of Binance.US, again.

22 I think I would make a couple of points. One is,
23 I'll refer to the officer's certificate, which has been
24 filed with the Court that makes clear that the company, that
25 is Binance.US's relationship with Binance.com, is limited to

1 the common ultimate beneficial owner and three commercial
2 agreements that the company previously disclosed to the
3 sellers' advisors. On a professionals' eyes only and
4 confidential basis in connection with the sellers' diligence
5 related to the purchase agreement.

6 Those matters are confidential, proprietary, and
7 would be harmful to the market insecurity to be disclosed.
8 I would believe that the Debtor's diligence, as well as the
9 committee's diligence, have taken a deep dive on these
10 issues. I think this has become extremely apparent from all
11 of these proceedings. The level of diligence conducted on a
12 buyer of assets in this proceeding has been extraordinary
13 and well beyond the norm.

14 It is, from my experience, much more than would
15 typically be conducted on a seller of assets. And so I
16 would invite the Debtors and the creditors committee to
17 express any concerns that they have about these issues. I
18 understand their diligence continues to be ongoing, as they
19 have testified, but that they are satisfied at present.

20 And finally, I would make the point, Your Honor,
21 that if anyone individually feels uncomfortable, no one is
22 required to sign up to Binance.com and have their assets on
23 -- excuse me, Binance.US and have their assets on the
24 Binance.US platform. We are merely making the platform
25 available to achieve distributions of cryptocurrency to

1 customers that elect to receive it in that manner.

2 THE COURT: Okay.

3 MR. GOLDBERG: Thank you, Your Honor.

4 MS. DIRESTA: Your Honor, they just keep bringing
5 up the whole crypto asset portion that I don't have to stay
6 on the platform, but my personal information does stay with
7 them, whether I want to open an account or not. So of
8 course I had security concerns about -- and as you stated in
9 the very beginning of the hearing, why can't they just
10 simply have my email address if they want to market to me?
11 Why do they have to have my bank account, my -- a copy of
12 the photo of my driver's license, my biometric information,
13 and all of those other things.

14 You know, I'm -- for me, I'm already uncomfortable
15 for them having my email, but now they have all these other
16 things, so they keep saying, well, you know, you can sign up
17 and then immediately remove your assets. That's my asset.
18 But you know what's more important to me is my personal
19 identifying information, especially when identity fraud and
20 hacking is very rampant nowadays. I value that more than
21 thousands of dollars on a platform.

22 THE COURT: Okay. My understanding is they can't
23 distribute the crypto to you unless you become a customer,
24 and that you can't become a customer without them having to
25 know your customer and other information about you.

1 I also understand from what they've said to day
2 that any customer has the option of telling Binance at any
3 time, not only to close an account but to delete all that
4 customer's personal information.

5 I can't make it any better than that. I can't
6 order or suggest to Binance that it make distributions to
7 you without know your customer information and anti-money
8 laundering information, because I would probably be
9 directing Binance to do something that's illegal. I can't
10 do that.

11 MS. DIRESTA: And I understand that. I just, like
12 I said, don't understand why they -- if I do not want to
13 open an account at all, why they can't just keep my email,
14 but leave the rest. And I don't understand why I have to --
15 because earlier it was stated I would literally have to sign
16 up for a Binance account --

17 THE COURT: That's an issue --

18 MS. DIRESTA: -- and then request them to delete
19 it.

20 THE COURT: That's the same issue that I have
21 raised as to why they need personal information of people
22 who don't want to open accounts. And I think we're still
23 waiting to hear a definitive answer on what we can do about
24 that. Okay?

25 MS. DIRESTA: Okay. Thank you so much, Your

1 Honor, for allowing me to speak.

2 THE COURT: Okay.

3 MR. EVANS: Your Honor, Joseph Evans from the
4 committee.

5 Just one thing. There was a question as to
6 inviting us to talk if we weren't satisfied with the
7 diligence (indiscernible - 12:51:41). I want to make clear
8 that the diligence process continues.

9 THE COURT: I understand. All right.

10 It's lunchtime. I think we're going to break
11 until 1:40 for lunch. And then we'll continue the argument.
12 Do we have any relief from the inflexible milestone, which
13 is beginning to look like quite a burden on the Court
14 because I not only have a lot of issues to rule on and a
15 decision to prepare (indiscernible - 12:52:17) but also the
16 extremely lengthy order to go through and mark up.

17 So do we have any relief from the proposed
18 milestone that that all be done by today?

19 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
20 & Watkins on behalf of Binance.US. That question has been
21 asked of our client. We do not have an agreement on
22 extension of the milestone at this time.

23 Time is of the essence on this transaction.

24 THE COURT: It may be of the essence, but you know
25 you've got an old man as a judge who can only do so much so

1 quickly. So --

2 MR. GOLDBERG: We're grateful for your attention
3 and efforts, Your Honor, and all the time you've made
4 available for us. We'll be speaking to my client at lunch.

5 THE COURT: Okay. Please convey to them my strong
6 urging that they extend that milestone until tomorrow.

7 MR. GOLDBERG: Thank you, Your Honor.

8 (Recessed at 12:53 p.m.; reconvened at 1:40 p.m.)

9 THE COURT: Please be seated.

10 MS. OKIKE: Good afternoon, Your Honor. Christine
11 Okike of Kirkland and Ellis on behalf of the debtors.

12 Your Honor, we would propose to move next to the
13 unfair discrimination arguments.

14 THE COURT: Okay.

15 MS. OKIKE: So, Your Honor, Binance.US and the
16 debtors have had productive conversations with the
17 unsupported jurisdictions to date. As we noted, we've
18 reached a deal with Vermont which will allow customers in
19 that state to receive in kind distributions. And we're
20 committed to continuing to work with the other three states
21 to try to come up with solutions that will allow customers
22 in their states to also receive in kind distributions.

23 We have also made revisions to the plan to allow
24 customers in unsupported jurisdictions who do not want to
25 sign up for the Binance.US platform to elect not to and to

1 receive cash distributions on the same timeline as customers
2 in the supported jurisdictions.

3 Your Honor, New York and Texas allege that the
4 plan unfairly discriminates against account holders in their
5 states by potentially delaying their recoveries relative to
6 account holders in supported jurisdictions and by providing
7 that they will receive their distributions in cash instead
8 of crypto if Binance.US does not get the necessary
9 regulatory approvals.

10 Your Honor, we took a look at the voting results
11 to see what New York and Texas customers want. And 95.68
12 percent of Texas customers that voted, voted in favor of the
13 plan and 96.28 percent of New York customers that voted,
14 voted in favor of the plan.

15 We also confirmed that none of the customers that
16 filed objections are located in New York or Texas based on
17 our most recent contact information that the debtors have
18 for them.

19 Your Honor, while we're hopeful that we will reach
20 agreements with all the unsupported states, the plan as
21 amended does not unfairly discriminate --

22 THE COURT: Did you say none of the objectors or
23 none of the negative votes?

24 MS. OKIKE: None of the objectors based off of our
25 books and records including the ones who had -- did not file

1 objections, but have raised concerns during the hearing are
2 located in New York and Texas. I do recall there was one --

3 THE COURT: There was somebody --

4 MS. OKIKE: -- woman --

5 THE COURT: -- who identified herself as --

6 MS. OKIKE: -- who identified --

7 THE COURT: -- from Texas.

8 MS. OKIKE: -- herself as Texas. We don't have
9 her listed as Texas --

10 THE COURT: Okay.

11 MS. OKIKE: -- but she may have moved.

12 THE COURT: Okay.

13 MS. OKIKE: So, Your Honor, while we'll hope -- we
14 are hopeful that we will reach agreements with all the
15 unsupported states, we do not believe that the plan unfairly
16 discriminates against account holders in unsupported
17 jurisdictions.

18 THE COURT: How is that -- what is the deal you
19 reached with Vermont and why is that not good enough for all
20 of the states?

21 MS. OKIKE: Your Honor, we hope that that deal is
22 good enough for all the states. It was reached very
23 recently. I think we filed it the night before the
24 confirmation hearing. My understanding is that Hawaii is
25 likely to also sign onto that deal. But, unfortunately, New

1 York did not really engage with us on any constructive
2 solutions. We have had conversations with Texas that have
3 been productive, but I think they will require potentially a
4 more creative solution than Vermont given --

5 THE COURT: The Texas submission, I was a little
6 befuddled because the Texas submission said, I think, that
7 other than with respect to stablecoins they don't think you
8 need any licenses to do what you want to do and that even as
9 to stablecoins, if I remember right, they thought you could
10 make the initial distributions. It's just that Binance
11 couldn't continue to trade them without some --

12 MS. OKIKE: Correct, Your Honor.

13 THE COURT: -- further approvals.

14 MS. OKIKE: And my understanding is that
15 Binance.US's existing infrastructure does not allow them to
16 turn off trading for specific coins.

17 THE COURT: I see.

18 MS. OKIKE: So Texas, if -- to the extent we are
19 able to reach a resolution will require a more creative
20 solution.

21 MS. WALL: Judge Wiles, this is Jennifer Wall and I was
22 the one that spoke up last week. I am a resident of Texas.
23 I have been a resident of Texas for 43 years.

24 THE COURT: Okay. Thank you, Ms. Wall.

25 MS. WALL: Thank you.

1 THE COURT: Okay. Go ahead, Ms. Okike.

2 MS. OKIKE: So, Your Honor, our view is that all
3 account holders regardless of where they reside are going to
4 have their claims dollarized as of the petition date and are
5 going to receive the same pro rata recovery based on all
6 account holder claims.

7 Your Honor, we don't dispute that the ability of
8 customers in the unsupported jurisdictions to access their
9 recovery and the form of that recovery may be different from
10 customers in supported jurisdictions. But any difference in
11 the outcome for account holders in New York, Texas or any
12 other unsupported jurisdiction is of the unsupported
13 jurisdiction's own making.

14 The unsupported jurisdictions can, as the other 47
15 states have, provide a way for their constituents to receive
16 distributions in kind. And the fact that they have not does
17 not mean that the plan unfairly discriminates against
18 customers in those --

19 THE COURT: Well, that's --

20 MS. OKIKE: -- states.

21 THE COURT: -- putting it a little pejoratively,
22 isn't it? You make it sound like the jurisdictions are
23 acting out of spite or laziness or who knows what else.
24 It's really a question of they have different regulatory
25 requirements and you can only do what your existing licenses

1 permit you to do, isn't that what it is?

2 MS. OKIKE: That's correct, Your Honor. But they
3 can't have it both ways. They can't ask us to comply with
4 regulations that don't permit us to make in kind
5 distributions and also act -- ask for their customers to
6 receive in kind distributions.

7 THE COURT: Right. As I understand it, the -- now
8 that you've equalized the ability to get cash distributions,
9 essentially what you've said is people who want in kind can
10 get it from Binance and they can get it as soon as they are
11 able to become Binance customers in compliance with the laws
12 of the jurisdiction -- the state where they reside.

13 MS. OKIKE: Correct.

14 THE COURT: And in some states that's more of a
15 problem than in others.

16 MS. OKIKE: Correct.

17 THE COURT: Okay. Is somebody here representing
18 New York?

19 My --

20 MR. ST. JOHN: Good afternoon, Your Honor.

21 THE COURT: You know, my question for plan
22 purposes is whether the plan creates a discrimination, but
23 it sounds to me like the debtors and Binance would be more
24 than happy to distribute to New York customers exactly the
25 same way they do everywhere else, and that the only thing

1 standing in the way of that is New York's regulations and
2 the status of licenses in New York state.

3 Why is that an impermissible discrimination by the
4 plan?

5 MR. ST. JOHN: Good afternoon, Your Honor. Jason
6 St. John for -- on behalf of the New York State Department
7 of Financial Services.

8 To answer your question, there are still two
9 differences between what a New Yorker today or frankly six
10 months post-closing is going to be able to achieve and the
11 same account holder in New Jersey or, you know, any of the
12 other 48 or the other states that are supported
13 jurisdictions.

14 One, there's still no possibility of, you know,
15 crypto in kind recovery and, two, to the timeline, the last
16 possible date for an account holder in the supported
17 jurisdictions to receive the dollarized value in cash of
18 their claim is three months post-closing. And for New York,
19 that date is still six months post-closing even under the
20 amended plan.

21 We want to note, of course, that, you know, the
22 amendments that, you know, Your Honor encouraged on Friday
23 and that the debtors of Binance --

24 THE COURT: It was only -- it's only six months if
25 there's a New York customer who would prefer to wait and see

1 if they can become a Binance customer, right?

2 MR. ST. JOHN: Yes, Your Honor. But part of the
3 basis of our objection is that the option of a in kind
4 recovery due to, you know, Binance licensure six months
5 post-closing isn't a realistic scenario. So the option
6 that's being given to those account holders isn't a
7 realistic one grounded in fact.

8 You know, we haven't heard anything other than a
9 -- you know, of statements in the reply memorandum of law
10 and statements in the plan that they will try for licensure
11 to show that that is actually a realistic possibility.

12 So the idea of holding off on recovery for New
13 Yorkers until, you know, possibly six months post-closing
14 for those who, you know, have perhaps failed to elect to
15 receive their recovery in cash still prevents an instance of
16 unfair discrimination in that point. It's not a realistic
17 option.

18 THE COURT: Well, there's a difference between
19 saying it's not a realistic option and that it's an unfair
20 discrimination. Nobody's -- no customer is forced to wait
21 the six months. They -- if they want their crypto in kind
22 and want to take their chances on being a Binance customer,
23 they can make that choice, take their chances whether
24 Binance gets the approvals or not.

25 But I don't -- I just don't see how this is -- you

1 know, they're trying to do what they can do consistent with
2 what the regulatory restrictions are. You know, in your
3 papers you said it's their own fault if they don't already
4 have the approvals. That doesn't mean that the plan is
5 creating a discrimination. Maybe it means that the past has
6 created a discrimination, but it doesn't mean that the plan
7 is -- we can only deal with the situation as it exists.

8 MR. ST. JOHN: Uh-huh.

9 THE COURT: And I think you would be the first one
10 to admit that they cannot do in New York right away what
11 they're proposing to do for Ohio customers.

12 MR. ST. JOHN: That's absolutely correct.

13 THE COURT: I presume you're not suggesting that
14 we should deny all residents of all other states the right
15 to get crypto currency distributions.

16 MR. ST. JOHN: Absolutely not, Your Honor. Our
17 objection is --

18 THE COURT: That's --

19 MR. ST. JOHN: -- focused on New Yorkers.

20 THE COURT: -- the only way I can think of to make
21 it equal. There's no other way to do it unless we make
22 everybody wait until whenever the regulatory process drags
23 out or unless we deny everybody in the country the
24 opportunity to get something just because New York customers
25 can't get it.

1 Is there any other way to make it equal in the way
2 that you suggest?

3 MR. ST. JOHN: Well, one, I think, immediate and
4 relatively easy adjustment would be rather than three months
5 post-closing being the date by which New Yorkers may elect
6 to receive cash, as it is with the supported jurisdictions
7 simply have that be the date in which they will receive a
8 dollarized value of their claim.

9 THE COURT: Well, but your complaint is about
10 equal -- by the way, it's phrased as unfair discrimination
11 which I think as a bankruptcy matter is the wrong term
12 because I don't need a cram down as to this class. I have
13 an acceptance by this class. I think your real argument is
14 whether all members of the class are being treated the same.

15 MR. ST. JOHN: Yes, Your Honor. I apologize.

16 THE COURT: And even that standard is they have to
17 be treated the same unless they elect otherwise. So if a
18 New York customer elects not to cash out and to wait to see
19 if he or she can get crypto currency in kind from Binance,
20 how does that violate the requirements of the code?

21 MR. ST. JOHN: Right.

22 The difference in timeline is, you know, again, as
23 we've alleged unequal treatment within a class. The --
24 while case law certainly does allow, as Your Honor's pointed
25 out and the debtors pointed out in their reply memorandum of

1 law, differences in either type of consideration or even
2 timeline on distribution for reasons, we would allege there
3 hasn't really been a reason here. The debtors have and
4 Binance have held out the hope of licensure or negotiation
5 within that six-month time frame. They -- you know, they
6 haven't really produced any evidence to show that the idea
7 or the, you know, perspective being --

8 THE COURT: But, you know, what if they had said
9 customers in New York have to wait a year and a half. That
10 would correspond to your regulatory timeline maybe, but it
11 seems to me that would be worse for New York customers

12 MR. ST. JOHN: We would be making the same
13 objection, Your Honor, of trying to, you know, get quicker
14 recovery for New York account holders. But perhaps I'm
15 missing your point.

16 THE COURT: So you don't want any New York
17 customers to have the right to wait to see if Binance can
18 get approval?

19 MR. ST. JOHN: Yes, Your Honor. That's one way of
20 putting it. We could also perhaps phrase it as, you know,
21 we don't think that the debtors and Binance have shown
22 through the plan or the supplemental materials that that's a
23 realistic option for New York account holders such that --

24 THE COURT: Why can't New York account holders
25 make that decision for themselves?

1 MR. ST. JOHN: Even if they were, Your Honor, it
2 is still an extra three months away from the latest possible
3 account holder in Ohio or New Jersey or a supporting
4 jurisdiction.

5 THE COURT: But they can -- you know, it's only if
6 they so elect, right?

7 MR. ST. JOHN: Yes, Your Honor. Although, if I
8 may respond. You know, given the number of creditors who
9 voted on the current plan, there may be reason to suspect
10 that, you know, creditors may not -- may miss a -- you know,
11 an election that's been given to them by the debtors to
12 receive their cash, you know, value and then at that point
13 their recovery would be delayed by --

14 THE COURT: All right. But it's not --

15 MR. ST. JOHN: -- three months.

16 THE COURT: -- unequal treatment under the plan if
17 people pay no attention and fail to take advantage of the
18 rights that they're given. There's only --

19 MR. ST. JOHN: it is.

20 THE COURT: There's only so much I can do. You
21 know, when you have this many people involved, is somebody
22 going to sleep on their rights, ignore things, fail to make
23 claims. All kinds of things can happen. There's only so
24 much I can do.

25 MR. ST. JOHN: Of course, Your Honor.

1 THE COURT: Right. And so if people have the
2 right to cash out at exactly the same time, that's the
3 feature that worried me because it did seem to be in the
4 parties' control and it did seem to be a difference that I
5 was having trouble thinking of a justification for.

6 But --

7 MR. ST. JOHN: And we appreciate the parties
8 reaching, you know --

9 THE COURT: Yeah. But the --

10 MR. ST. JOHN: -- an amendment (sic) on that
11 point.

12 THE COURT: -- ability to -- but they cannot do --
13 they cannot give crypto, so you're saying that equal
14 treatment would mean cashing them out even if they don't
15 want to be cashed out, even if they would prefer to wait to
16 see if they might still get in kind distributions. How is
17 that the same treatment?

18 MR. ST. JOHN: Your Honor, again, so we are the
19 licensing entity. You know, as the debtors have pointed
20 out, that's, you know, seemingly, you know, holding up this
21 in kind distribution. And we're objecting on the grounds
22 that we don't think that option or that -- to New Yorkers to
23 wait to see if there will be in kind distributions is one
24 that's grounded in fact or a realistic scenario even six
25 months post-closing.

1 THE COURT: Why does this take so long?

2 MR. ST. JOHN: Your Honor, New York is a pretty
3 strict virtual currency licensing regime.

4 THE COURT: That just tells me that it takes long.

5 (Laughter)

6 THE COURT: Why does it -- what does that mean?
7 What has to be done and why does that take so long?

8 MR. ST. JOHN: Your Honor, there's a number of
9 requirements that go into virtual, you know, currency
10 licensing regime. You know, showing reserve requirements,
11 of course meeting certain cyber security regulations and
12 showings. You know, as Your Honor likely knows, you know,
13 complying with regulatory requirements can certainly just
14 take a while, which is sometimes at odds with the bankruptcy
15 goal of returning accounts or, you know, or accounts or
16 claims to creditors as quickly as possible.

17 And so in this case we do have a conflict here.
18 But New York as the licensing entity can simply waive its
19 licensing requirements to allow Binance to make that
20 distribution.

21 THE COURT: And what about the Vermont solution,
22 why doesn't that work for New York?

23 MR. ST. JOHN: Of course, Your Honor.

24 From my understanding, but I will defer to the
25 debtors and to Binance if I misunderstand it, the Vermont

1 solution is a full trading account that limits staking and
2 has a sunset date which is not -- that's essentially
3 granting licensure to Binance for those New York account
4 holders if it allows full trading. That's not a, from our
5 view, a particularly limited account that would or a limited
6 licensure that would be a possible negotiation for us.

7 Of course, I defer to the debtors and Binance if
8 I've misstated that deal.

9 THE COURT: I'm sorry.

10 MR. ST. JOHN: I would defer to the debtors and
11 Binance if I have misunderstood the deal with Vermont.

12 THE COURT: Well, I think any difference in
13 treatment that results here is the result of regulatory
14 constraints. And the particular differences that you
15 complained about, which is the ability to get crypto
16 currency, is that is -- that would not be solved by the
17 solution that you suggested, which is just forcing everybody
18 to get cashed out in three months whether they want to or
19 not. It seems to me that forcing that decision on everybody
20 actually would create more of a differentiation.

21 As long as Binance is trying to get licensed in
22 New York, and so long as people in New York would prefer to
23 take their chances and possibly get their crypto in kind, it
24 seems to me that the debtor's proposal actually goes further
25 in the way of kind of providing the same opportunities, as

1 least as far as they can in light of regulatory constraints.

2 And I don't think your proposed solution is really
3 an answer. I think your solution would make it worse.

4 MR. ST. JOHN: Okay. Yes, Your Honor. You know,
5 as our objection noted, you know, the objection was on two
6 points, both distribution of, you know, crypto in kind and
7 the timeline. It seems like Your Honor has already answered
8 the timeline point.

9 On crypto in kind, again, the distribution
10 couldn't -- you know, right now would not happen through
11 Binance for regulatory reasons. You know, obviously under
12 the toggle it would happen through Voyager. It seems as
13 though, you know, it is still possible for Voyager to
14 execute the toggle.

15 THE COURT: Well, but if they do the Binance deal,
16 they will have sold their platform. They won't be able to
17 do anything. They won't -- they couldn't transfer crypto
18 anymore than I could, I don't think.

19 MR. ST. JOHN: They would still be effecting
20 transfers to --

21 THE COURT: Well, probably they could do it better
22 than I could.

23 (Laughter)

24 THE COURT: I think anybody in the room could
25 probably do it better than I could, but.

1 MR. ST. JOHN: Yes, Your Honor.

2 They would still be effecting transfers to
3 Binance, of course, and we recognize that's a different
4 scenario than transferring to account holders themselves.

5 THE COURT: Yeah. Okay.

6 MR. ST. JOHN: Thank you, Your Honor.

7 THE COURT: Does Texas have anything in addition
8 that they want to add on this issue?

9 MS. RYAN: Yes, Your Honor. For the record this
10 is Abigail Ryan with the Office of the Texas Attorney
11 General on behalf of the State Securities Board and the
12 Texas Department of Banking.

13 I was happy to see the change that our citizens
14 can get a cash out option as early as three months to be
15 aligned with supported jurisdictions' account holders that
16 choose not to go to Binance. I think that makes it a more
17 fair plan in that regard.

18 And while we would love to see our citizens get
19 their crypto back, at this point due to the set up of our
20 regulatory (indiscernible) here in Texas, that's not an
21 option.

22 However, we have been in conversations with
23 Binance and the debtors and we are looking to do some sort
24 of an agreement like Vermont, but as Ms. Okike said, it will
25 have to be a little different based upon our rules here.

1 The trading of the stablecoin, the ability to stake, those
2 things we can't agree to. But if Binance can find a way to
3 do a withdrawal only account, I think that's something that
4 we definitely could consider and we will move forward in
5 these discussions in hopes that we can come to an agreement.

6 THE COURT: Okay.

7 MS. WALL: I will say that from a Texas resident,
8 that is wonderful news for all the residents in Texas. So
9 thank you very much for (indiscernible) that.

10 MS. RYAN: Thank you. Absolutely.

11 And if you have any questions, Your Honor, I'm
12 happy to answer them.

13 THE COURT: No. It sounds like as long as we've
14 made the cash out option that you understand that there's
15 only so much that can be done in terms of making crypto
16 available in kind and that it's not really a bankruptcy
17 issue at that point.

18 And I-- to the extent you can work it out with
19 the parties, I encourage you to do so and hope you are able
20 to do so.

21 MS. RYAN: Thank you, Your Honor. Me, too.

22 THE COURT: All right. Is there anybody else that
23 wants to be heard on the, what I will call the unequal
24 treatment or unfair discrimination argument?

25 MR. NEWSOM: Your Honor, this is Dan Newsom, pro

1 se creditor. I did file an objection as it relates to the
2 plan for VGX, specifically Section 1123(a)(4) in terms of
3 unequal treatment for VGX account holders.

4 THE COURT: Yeah. I saw your objection, but I was
5 having a little trouble understanding just what you think is
6 unequal about the treatment.

7 MR. NEWSOM: Well, I would be happy to expound on
8 that, Your Honor.

9 I believe -- first it's important to state that in
10 the event that the smart contract is not sold, it's
11 important for Your Honor to understand that VGX has no
12 underlying technology or utilities, and in the event that
13 it's not sold, even the treasury statement states that VGX
14 may decline in value and may have no value post confirmation
15 of the plan.

16 So as it relates to discriminatory treatment, I
17 bought VGX prior to petition date. I bought a crypto
18 currency that had utility, had value from the described
19 organization which by their accounts had a straight road
20 trajectory.

21 Following the petition, in the event that the
22 smart contract is not sold, I would be receiving something
23 in kind that is not what I bought prior to petition where
24 other creditors in the same class are going to get back
25 their pro rata share of crypto currency that not

1 fundamentally changed.

2 So in terms of opportunity for recovery, I believe
3 that in the event that the smart contract is not sold, the
4 VGX account holders would be discriminated against unfairly.

5 THE COURT: What are the smart contracts and how
6 did they tie in with VGX, and would you say it's otherwise
7 -- otherwise there's no underlying contract?

8 Ms. Okike, can you explain all that to me in terms
9 a fourth grader would understand?

10 MS. OKIKE: Sure.

11 Your Honor, so my understanding is that the smart
12 contracts determine the utility of the token, so the value
13 of the token. And different entities could use the smart
14 contracts to generate utility for the token.

15 We are not selling the smart contacts (sic) in
16 connection with the Binance.US transaction. Binance.US has
17 agreed to submit VGX for listing, to go through the process
18 of listing the token on the exchange. It's not currently
19 listed. And we are actively marketing the smart contracts
20 that underline the token.

21 Our hope is that we are able to sell the smart
22 contracts to a third party which will allow the token to
23 continue to have utility going forward.

24 Your Honor, in our view VGX is no different than
25 other tokens that don't have utility like Bitcoin or

1 Dogecoin, and the value will fluctuate depending on a number
2 of different factors. And from our perspective we don't
3 believe that there's unequal treatment with respect to VGX
4 because --

5 THE COURT: VGX is on a blockchain transfer of the
6 same kind of ways that either Bitcoin or other --

7 MS. OKIKE: Correct.

8 THE COURT: Okay. So it may not be as attractive
9 to people as Bitcoin, but it's just another coin in that
10 respect.

11 But these smart contracts that -- what exactly are
12 they and how do they support or generate value to VGX?

13 MS. OKIKE: Your Honor, I may need to ask Mr.
14 Tishner (phonetic) to help on the technical aspects with
15 respect to that.

16 MR. AZMAN: Your Honor, if you would like Mr.
17 Evans can probably provide us the technical information --

18 THE COURT: That's fine.

19 MR. AZMAN: -- rather than calling a witness.

20 MR. EVANS: Joseph Evans, McDermott Will & Emery
21 on behalf of the committee.

22 Your Honor, each token has a smart contract. That
23 smart contract dictates how a token will work. And so what
24 the token is worth, if there are any rewards for staking the
25 token, for example, but as a technical underpinning for each

1 token VGX is what's called an ERC20 token. That means that
2 it's traded on the Thorium blockchain, like many other
3 tokens, but it has its own smart contract that governs how
4 transactions will work and what the token can be used for.

5 There's a little bit of a difference between
6 utility and smart contract. Utility is what the token is
7 used for, meaning can I buy things with it, can I pay
8 transaction fees with it, can I use it to join a group, for
9 example.

10 But the smart contract is the technical software
11 that permits it to work. And so what's being marketed is
12 the sale of that smart contract so a third party can use,
13 possibly withdraw the smart contract and initiate a new one
14 to allow for other usages of VGX.

15 THE COURT: Okay. Thank you.

16 And if nobody buys the smart contract, how could
17 anybody use VGX?

18 MR. EVANS: Well, the smart contract is public.
19 It's out in the world. And so VGX can still be traded and
20 used. It's just -- there will be no entity behind it really
21 making improvements or trying to figure out how to use it in
22 a meaningful way.

23 And so I think what the concern is, is that
24 without any entity really using and promoting the VGX smart
25 contract, the value of VGX will decline and the amount of

1 entities actually using it for something other than
2 speculation would decline.

3 THE COURT: Do all crypto currencies have backing
4 of that kind and smart contracts of that kind?

5 MR. EVANS: Yes.

6 THE COURT: So Bitcoin, for example?

7 MR. EVANS: Well, Bitcoin is a separate
8 blockchain, so Bitcoin is a blockchain that only -- that the
9 Bitcoin token is on. Ethereum, for example, is another
10 blockchain and there are a variety of other tokens that are
11 offshoots of the Ethereum blockchain. Those are called
12 ERC20 compliant. Those each have their own smart contracts.

13 THE COURT: Okay. I'm pretty sure I would not
14 pass a test on this subject, but I think I understand.

15 (Laughter)

16 MR. EVANS: Thank you, Your Honor.

17 MR. AZMAN: Your Honor, I think what you're -- you
18 were getting at just now is that the risk of the VGX token
19 potentially not being worth anything is a risk that you
20 might have with any other token that's being distributed
21 such that if Bitcoin were to collapse tomorrow, you could
22 potentially make the same argument.

23 But I don't think that that is unfair or
24 discriminatory treatment.

25 THE COURT: Well, I think in fairness to the

1 objection, what he's saying is VGX may have a much higher
2 chance of cratering than Bitcoin does.

3 Is that essentially what you're saying?

4 MR. NEWSOM: Thank you, Your Honor.

5 I would actually go further to state that VGX
6 uniquely is singularly impacted by the actions or inactions
7 of the debtors. And (indiscernible) that VGX has
8 (indiscernible) utility in the event that its smart contract
9 is not sold to an entity other than speculation is very
10 misleading, Your Honor. No one's going to be able to sell
11 VGX as -- or use it as a currency, use it in any way. It's
12 literally just an ERC20 branch -- excuse me -- branch chain
13 (sic).

14 What -- you can -- anybody can just create a chain
15 off of the ERC20 token and the smart contract allows VGX to
16 be (indiscernible) into infinity. That precipitates the
17 drop in value even further.

18 So I -- there's really, really no value for VGX
19 other than (indiscernible) speculation -- I'm sorry -- I
20 said (indiscernible) in the court, Your Honor, but that's
21 what this might become. And the chance that it has any
22 value at all if the debtors do not smell the smart contract
23 is nearly guaranteed.

24 THE COURT: And what is the solution that you
25 suggest? Are you saying that --

1 MR. NEWSOM: The specific relief for -- I'm sorry.
2 Go ahead.

3 THE COURT: Yeah. Are you saying the debtor
4 shouldn't distribute VGX to people who had it?

5 MR. NEWSOM: I'm saying that in the event that
6 they don't smell the smart contract, they've admitted that
7 they remain hopeful that they can. However, I think that
8 the FTC's unique statements from the last couple of days'
9 hearings might add additional barriers to that.

10 But in the event that they don't smell the smart
11 contract, that they allow VGX holders to -- or I guess
12 rather they liquidate the VGX position and distribute it in
13 UFC (sic) rather than giving it to them in kind so then have
14 to work with (indiscernible) digital code and instead
15 receive their pro rata share of UFC at the same algorithm
16 that all the other second class creditors are receiving.

17 THE COURT: Of course, you and other holders of
18 VGX, if you don't want VGX, have the right to just get cash
19 for all your cryptocurrencies. You just don't have the
20 right to kind of do that on a coin by coin basis, right?

21 MR. NEWSOM: That is correct. If I -- I had
22 multiple positions, Your Honor, but I did have a large VGX
23 position. And if I wanted to take all of those positions in
24 cash, I would have to take all of them in cash, not just
25 VGX.

1 THE COURT: Right.

2 Well, I'm not sure how as a practical matter it
3 would be possible for the debtors to do the re-balancings
4 and calculations that they would need to do if they were
5 going to give people a sort of coin by coin decision-making
6 opportunity as to whether as to that particular coin they
7 wanted cash or the coin. I just -- what I do understand
8 about this, it seems to me that the task would be just about
9 impossible.

10 MR. NEWSOM: Your Honor, I do think that it would
11 probably be an undue burden to a lot of the, you know, the
12 individual choices or cryptos to be liquidated either in
13 cash or in kind. That probably would become plus. However,
14 Voyager is -- or the VGX token is unique in that Voyager
15 actually has direct control over its stake. And in the
16 event that it does not take the necessary steps
17 (indiscernible) smart contract, they are in -- they are
18 materially impacting the opportunity for recovery of VGX
19 account holders.

20 Further complicating the matter, Your Honor, is
21 that Voyager holds in my estimation somewhere in 35 million
22 plus of their own VGX tokens. And if they go to liquidate
23 that on the open market, that further drops the price of the
24 token and therefore the opportunity of recovery for
25 creditors.

1 There's a lot that Voyager can't control about the
2 outcome of the recovery for creditor. And I think it is
3 unique and deserves a special carveout in the disclosure
4 statement and the plan in the event that they don't sell the
5 smart contract. They have a responsibility to the creditors
6 (indiscernible).

7 THE COURT: What's the debtor's response?

8 MS. OKIKE: Your Honor, from the debtor's
9 perspective, I agree with -- and, apologies, I don't
10 remember the gentleman's name. I agree that the debtor's --

11 THE COURT: It's Mr. Newsom.

12 MS. OKIKE: Mr. Newsom.

13 I agree with Mr. Newsom that the debtors do have
14 more control with respect to VGX just given that it's a
15 token obviously that is issued by Voyager. We have every
16 intention of doing what we can to make sure that there is
17 utility going forward. But the reality is, is that we are
18 either consummating a sale transaction or a liquidating
19 transaction and winding down.

20 And so while the plan provides for all account
21 holders to receive the same recovery, same pro rata recovery
22 based off of values of the tokens at a particular point in
23 time, there is the risk of, you know, a material decrease in
24 value of VGX to the extent that there is no utility going
25 forward. And we acknowledge that. I'm not sure what the

1 solution is. I think from our perspective we do still
2 believe that creditors are being treated equally because
3 we're determining the value at a specific point in time.
4 Customers are receiving distributions. They're able to cash
5 them out immediately if they so choose.

6 THE COURT: When customers get in kind
7 distributions, if I had VGX in my account, am I going to get
8 more VGX than I ever held in the past or --

9 MS. OKIKE: No.

10 THE COURT: Okay. So it's not like my entire --
11 I'm going to be a poor customer who gets an entire
12 distribution in the form of VGX or anything like that.

13 MS. OKIKE: No.

14 THE COURT: Okay. Unless V --

15 MS. OKIKE: And so what we are doing --

16 THE COURT: Unless VGX is the only thing that I
17 ever owned.

18 MS. OKIKE: Correct.

19 What we are doing in the rebalancing is making
20 sure that people get their pro rata recoveries in the same
21 form.

22 THE COURT: Does anybody have any idea of how
23 likely it is that VGX will continue to have value? I mean,
24 I -- somebody -- I asked somebody the other day what the
25 current value is and they told me and I forget, but it was

1 relatively low.

2 MS. OKIKE: I think it was 30, 36 cents, 33 cents.
3 We can check. I believe it was in the 30 cents.

4 But, Your Honor --

5 MR. NEWSOM: Your Honor, it's currently 39 cents,
6 but I -- it is important to understand that the majority of
7 the (indiscernible) is locked up on the platform and that
8 number can be manipulated, I suppose, easily by market
9 forces.

10 Furthermore, my cost average was close to \$2.00.
11 And so, I mean, I -- it's -- I mean, 39 cents is relative to
12 the average cost of VGX to take on a (indiscernible)
13 position, but I don't think that we can clearly state that
14 because VGX has increased in value since we filed the
15 petition that it will continue to do so. In fact, if we
16 remove the smart contract -- or don't sell the smart
17 contract, there's no value. It's (indiscernible) a
18 guarantee that it goes to zero and the opportunity for
19 recovery is essentially lost, zero.

20 MS. OKIKE: Your Honor, I think the reality is we
21 just don't know. Everyone knows Voyager is in bankruptcy
22 and VGX has been rising. So there's no real explanation for
23 why VGX is rising, but it has. And I don't think we know
24 how it will trade post-closing. And I think that's --

25 MR. NEWSOM: I think we can read --

1 MS. OKIKE: -- the same --

2 MR. NEWSOM: Excuse me.

3 MS. OKIKE: I'm sorry.

4 MR. NEWSOM: I'm sorry. Go ahead.

5 MS. OKIKE: No. No. go ahead.

6 MR. NEWSOM: I was just saying that I think we can
7 reasonably assume that it's risen in price because of the
8 speculative nature of in the event the smart contract sold.
9 Also, the elements that (indiscernible) more is locked up
10 and you can move the price easily and therefore manipulate
11 the market to make money off of (indiscernible) trading.

12 I think that those elements will not exist going
13 forward post-consummation of the deal and the failure to
14 sell the smart contract.

15 MR. AZMAN: Your Honor, Darren Azman for the
16 committee.

17 Just a practical thought. And I think what the
18 gentleman on the phone is suggesting that he would like to
19 have happen is for the estate to liquidate VGX and
20 distribute cash. I think that's what I'm hearing.

21 But if the estate were to do that, that in and of
22 itself would have the same effect on the price of VGX. It
23 would probably crater. So whether the VGX is liquidated in
24 the hands of customers immediately after they receive it or
25 whether it is liquidated today, it's --

1 THE COURT: I think as I understand the objection
2 it's not that so much. It's that Mr. Newsom thinks that the
3 current market value for VGX is much more elusory than the
4 current market value for other coins, and that treating it
5 as an item that actually has a value of 39 cents as of the
6 date of distribution is unrealistic and has the effect of
7 reducing his recovery because there's, unlike other coins,
8 there's much greater risk that the real value of VGX is
9 zero.

10 I think that's -- does that correctly sum up your
11 objection, Mr. Newsom?

12 MR. NEWSOM: Yes, Your Honor. That's a pretty
13 fair characterization.

14 MR. AZMAN: I'm not sure how we fix that.

15 MS. OKIKE: Your Honor, but just to -- further
16 counterargument, I mean, if we are able to sell the utility,
17 the smart contracts underlying the token, and the value
18 rises, I mean --

19 THE COURT: He might get more.

20 MS. OKIKE: Exactly.

21 THE COURT: Right.

22 MR. NEWSOM: And to be clear, I'm not asking that
23 the debtors do not continue to pursue the sale of the smart
24 contract. I do think it is more unlikely since the FTC has
25 stated that some of their staff believe it has elements of

1 the security streams action.

2 However, I remain hopeful that the ultimate buyer
3 would be a high quality buyer that intends to comply with
4 all regulatory (indiscernible). But I think that's probably
5 unlikely, and hope is not a strategy here and where we fail
6 to do that we are materially impacted.

7 I would state that the difference between
8 liquidating as part of the estate and distributing
9 (indiscernible) pro rata share in cash to VGX account
10 holders is different than giving them in kind VGX
11 distributions and then allowing them to sell it on the open
12 market. I do think that's -- it -- I think it's -- it
13 needed to be pointed out to Mr. Azman's point that there is
14 a difference in those two things.

15 THE COURT: But assuming we can't give customers
16 the right to make a coin by coin election, because I just
17 don't think that would be practical, what other solution do
18 we have, Mr. Newsom? You most certainly, and everybody
19 else, have the right to take cash instead of any
20 cryptocurrencies. I'm not sure that there's any
21 intermediate approach that is practical.

22 Do you -- what is it you see --

23 MR. NEWSOM: It would need -- I'm sorry.

24 THE COURT: Go ahead. What would you suggest?

25 MR. NEWSOM: Well, do we need a coin by coin

1 solution here or should we just specifically carve out these
2 -- well, let me rephrase that.

3 Should we amend the disclosure statement and the
4 plan which is already singled out for VGX. It would just be
5 more thorough or thoughtful, rather, in the event that the
6 smart contract is not sold and a plan as a result of that.
7 VGX is already singled out in the plan and the disclosure
8 statement. I'm just asking that we be a little bit more
9 thorough and thoughtful about how that opportunity for
10 recovery is more equal to those VGX account holders.

11 THE COURT: Given the amount of VGX the debtor
12 holds at that current market price, what does that translate
13 to in terms of value?

14 MR. NEWSOM: I believe it's between 10 and 20
15 million based off of Mr. Tishner's testimony and that's
16 probably in line with what I believe they had in 35 million
17 to 40 million tokens (indiscernible) in the estate. But I
18 -- correct me if I'm wrong.

19 THE COURT: And we have some people scurrying
20 around the room getting an answer to the question, so.

21 MR. SLADE: Your Honor, I apologize. Mike Slade
22 for the debtors.

23 If we disclose the information it's going to move
24 the market. That's the concern.

25 THE COURT: Oh, you -- it's not public how much

1 you hold at the moment?

2 MR. SLADE: No.

3 THE COURT: Okay.

4 Is it fair to say it is a relatively small
5 component of the total value that will be distributed?

6 MR. NEWSOM: Your Honor, I believe 30 percent of
7 accounts held some amount of VGX. I believe it's the third
8 largest holding on the platform.

9 THE COURT: Well, that's different in terms of,
10 you know, measuring the value of what's being distributed.

11 MS. OKIKE: I would say it's relatively small
12 compared to the overall value of the portfolio.

13 THE COURT: The problem, Mr. Newsom, is it seems
14 to me you yourself would not want the debtors to just give
15 up on VGX. You kind of want them to, I don't know what,
16 wait, see if they can sell the smart contract before they
17 distribute VGX. I'm not sure we have that option at the
18 moment, to tell you the truth.

19 So what are we supposed to do?

20 MR. NEWSOM: I think that's part of the problem,
21 Your Honor, is that we don't know the fate of VGX. We don't
22 know that Binance.US is in (indiscernible). We don't know
23 that they'll sell the smart contracts. We think -- I think
24 personally that it's probably unlikely given the FTC's
25 statements.

1 So I think in the event that the smart contract is
2 not sold, since VGX already has its specific clause carved
3 out for it and what happens to it, we amend that clause to
4 ensure protection and (indiscernible) treatment for those
5 VGX account holders.

6 If the value of the estate is relative -- if it's
7 relatively small in terms of dollarized value to the estate,
8 I don't think there's a large impact on the creditor body at
9 large. It seems like a simple thing to ask and it would
10 ensure protection while also allowing the debtors to
11 continue to pursue the sale of the smart contract. I think
12 -- it sounds simple to me, and if I'm wrong please correct
13 me, but I think the ask is simple and the solution is
14 simple.

15 THE COURT: I'm not sure the solution is that
16 simple. You know, if the debtors hold VGX until they see if
17 they sell the smart contract, the prices may change. The
18 debtors will have allocated things to other customers. They
19 won't necessarily have the ability to make up the
20 difference. These are all calculations that have to be done
21 at one time to make sure that the value is based on the date
22 of calculation or at least equal. That's what the
23 bankruptcy code commands.

24 So I'm not sure we can hold VGX aside without
25 making it impossible to do the all -- do all of the

1 calculations.

2 MR. NEWSOM: That's a fair point, Your Honor. And
3 I think that we should consider that we've had nine months
4 to sell the smart contract and we have yet to do it, and I do
5 think the FTC adds a wrinkle to it now. And so perhaps
6 putting a time frame on which steps should be done, and in
7 the event that it's not done say in the next three or four
8 weeks, whenever the pro rata calculations are determined, we
9 make the decision to liquidate VGX at the USD value pro rata
10 share equal to (indiscernible) class creditors.

11 THE COURT: Is there any time frame for the sale
12 of the smart contract?

13 MS. OKIKE: Your Honor, we have some parties that
14 are interested. They've been meeting with the company and
15 the creditors' committee as well. But we haven't made an
16 actual determination as to a specific buyer.

17 THE COURT: Okay. But is it fair to say that it's
18 not a hopeless prospect for VGX? There's some people who
19 are at least indicating interest in buying the contract?

20 MS. OKIKE: That's correct, Your Honor.

21 We have some holders of VGX who are interested in
22 providing utility for the token going forward and have
23 offered various solutions.

24 THE COURT: I see.

25 Does that change your feeling, Mr. Newsom?

1 MR. NEWSOM: I think it's the same simply because
2 it -- we have no confirmation that that will indeed happen.
3 And I would wonder if these individuals that are interested
4 in purchasing the smart contract and providing utility for
5 VGX, are they aware of the FTC statements in the last two
6 days that VGX has elements of a securities transaction. I
7 think that's a barrier there.

8 MS. OKIKE: I think, Your Honor, the only
9 alternative would be to sell all of the VGX at the time that
10 we do the distribution and, you know, have those dollars be
11 distributed in exchange.

12 THE COURT: And how would all the other customers
13 who at the moment aren't expecting that as part of the plan,
14 how would they feel about that?

15 MS. OKIKE: That's why -- I mean, I don't think
16 it's necessarily a viable solution. I don't know if we
17 could do it on a customer by customer basis. It seems
18 overly burdensome.

19 THE COURT: Okay. Is there anybody else who would
20 like to be heard on this question?

21 Okay. Technically, as a matter of equal
22 treatment, the VGX coin is being treated just like all the
23 other coins and the amount that holders will receive is
24 being calculated in exactly the same manner.

25 I think the real objection here is not so much

1 whether there is equal treatment as whether the calculations
2 are skewed and, therefore, the recoveries are actually
3 different because the VGX value might be elusory.

4 And I don't think anybody's suggesting that it
5 actually is elusory, certainly not at its current value of
6 39 cents, or that it is necessarily going to be elusory,
7 just that it might turn out to be elusory.

8 But the value is already fairly low. It seems to
9 reflect the fact that people don't know just what utility
10 it's going to have. And I don't think I have enough
11 evidence in front of me to say that it is worthless to the
12 point of being inappropriate to be taken into account as an
13 item of distributive value.

14 And nor do I have enough reason to believe that
15 it's so hopeless that I should kind of require it to just be
16 excluded from the entire set of calculations. And I don't
17 know how to do the kind of in between that you're suggesting
18 without making the calculations of the plan impossible.

19 So unless somebody has a better mathematical
20 solution for me than I'm thinking of, I just don't think
21 what you want, Mr. Newsom, is something that I can grant.

22 MR. NEWSOM: Your Honor, I certainly respect your
23 decision. But I will state that I think that if we were to
24 ask the debtors or the professionals if they were to receive
25 their salary in VGX based off the current plans or future --

1 likely future, they would all quickly refuse. I think that
2 there's a high likelihood that this is elusory. It's not a
3 guarantee.

4 THE COURT: Okay.

5 MR. MENDELL: Your Honor --

6 THE COURT: Yes.

7 MR. MENDELL: -- this is Marshall Mendell, pro se
8 creditor. I just want to add that I am a very large VGX
9 holder, maybe the largest, and so this is a position which
10 is very important to me as it is to Mr. Newsom and many
11 other creditors who I know personally who also have large
12 stakes in VGX.

13 And I'm wondering if it's possible to please ask
14 the debtor what is the hold up in securing the transaction
15 if we've already had a couple of transactions with FTX and
16 Binance that were kind of put together. But it appears that
17 a utility for the VGX token is taking longer.

18 MS. OKIKE: Your Honor, I think at the time that
19 we were negotiating the various transactions, there was a
20 question as to, at least in the first transaction, whether
21 FTX was going to acquire VGX. We did not want to proceed
22 with selling obviously the smart contracts given that it
23 might have been included in the sale.

24 With respect to Binance, again, we're hopeful that
25 the token is withstood on the exchange.

1 That being said, until the sale transaction is
2 approved, we weren't really seeking to sell off piecemeal
3 assets. So, you know, we are working towards this, but I
4 will confess it hasn't been, you know, the primary focus
5 just given the larger transaction that we were, you know,
6 diligently trying to execute.

7 THE COURT: Historically, what did VGX trade at?

8 MS. OKIKE: So the all time high was \$12.54.

9 (Pause)

10 MS. OKIKE: 24 cents as of the petition date.

11 THE COURT: Don't I have to assume that the 39
12 cent market value is the market's calculation of the
13 likelihoods here and the option value, I suppose, associated
14 with VGX?

15 You know, there are options that sell that based
16 on current market conditions are way out of the money, but
17 they have value. For heaven's sake, even companies that
18 have announced bankruptcy, sometimes their stock still sells
19 for a price when it's hard to see any realistic likelihood
20 that the stock will have any value, but it's option value.

21 And we distribute options sometimes in bankruptcy that
22 are way out of the money, but they're deemed to be items of
23 value precisely for that reason, because there's a chance
24 that they may come into value.

25 So I guess unless you have evidence that the 39

1 cents is not a fair calculation of the option value of the
2 VGX, I'm not really in a position to say that giving that
3 kind of value to VGX would be unfair to the people who are
4 going to receive VGX.

5 MR. MENDELL: Your Honor, I have a secondary
6 question.

7 Is 22 cents or whatever the buyout number, is that
8 a worst case scenario for our recovery on VGX, please?

9 THE COURT: 22 cents? I don't know what you meant
10 by 22 cents.

11 MR. MENDELL: I think that that might be the
12 number of the Chapter 11 date back to, what is it, June 5th
13 or July 1st, something like that --

14 THE COURT: Oh --

15 MR. MENDELL: -- the --

16 THE COURT: The testimony --

17 MR. MENDELL: -- (indiscernible) --

18 THE COURT: The testimony based on the current or
19 based on last Wednesday or Thursday's values, I thought that
20 the testimony was that the minimum recovery would be in the
21 40-something range with an upside up to maybe 73 or so if
22 things go right on various contingencies.

23 Did I remember that right?

24 MR. MENDELL: Your Honor, I think that's the -- I
25 think that may have to do with market value, but there is a

1 -- on our Voyager app we have a particular maximum recovery.

2 MS. OKIKE: I don't think it's the maximum
3 recovery. I think you're seeing your claim dollarized as of
4 the petition date based off of the price as of the petition
5 date.

6 MR. MENDELL: Yes. You're right. Thank you for
7 clarifying.

8 So can you please answer, is there a minimum
9 recovery for VGX holders on each token, please?

10 MS. OKIKE: No. There's not a minimum account --
11 sorry -- there's not a minimum amount. It will depend on a
12 number of factors, but we anticipate, you know, a 48 percent
13 to potentially in the 70 percent recovery on account of, you
14 know, the claims that you have against the company,
15 including VGX.

16 THE COURT: So the way the calculations work, the
17 dollar amount of your claim is based on the dollar value of
18 your account as of the petition date.

19 Everybody will get the same percentage of that
20 dollar amount in either cash or crypto currencies. But
21 people -- in terms of which crypto currencies they get, that
22 will -- there will be some effort to match that to what your
23 prior holdings were so that hopefully there will be fewer
24 tax consequences, though no guarantee that that will be the
25 case. So --

1 MR. MENDELL: And if that applies to VGX, that
2 would be somewhat satisfactory to me given all things
3 considered. So I think that would be good.

4 THE COURT: Yeah. What it would mean as to VGX
5 would be, you know, if you had a \$10,000 allowed claim as of
6 the petition date and if the initial distribution was going
7 to be 40 cents, just to make the math easier in my head, you
8 would get a package of things that has a value as of the
9 calculation date of 40 cents. Some of that would be made up
10 of VGX based on whatever VGX's price was as of that date.
11 Some of that might be made up of other coins if you held
12 other coins.

13 Is that fair, Ms. Okike?

14 MS. OKIKE: Correct.

15 THE COURT: Okay.

16 MR. MENDELL: Thank you. Thank you very much,
17 Your Honor, for the clarification.

18 I have nothing --

19 MR. NEWSOM: Your Honor --

20 MR. MENDELL: -- further.

21 MR. NEWSOM: -- I'm sorry to spend so much time
22 here. I know we're all very busy. But I would like to go
23 back to your point with regards to proof to the elusory
24 value of VGX currently.

25 It is hard to state since the debtors have refused

1 to reveal their position on VGX how much of VGX tokens are
2 currently locked up and what the remainder is available on
3 the open market.

4 But suffice it to say that it is a very low
5 percentage of the overall available tokens and, as such, the
6 trade -- the token can be manipulated easily. And we know
7 with several efforts from anonymous groups on social media
8 sites or otherwise that have attempted to pump the VGX
9 price. They've even pumped it up to 92 cents and there is
10 some residual value left as people have been sort of left in
11 the wake of the pump and dump scheme.

12 So I -- Your Honor, there's multiple factors here
13 that are currently holding the value of VGX and none of them
14 would remain in place in the event that the smart contract
15 is not sold.

16 THE COURT: What evidence do I have of that? See,
17 that's the problem. I don't have evidence. I have rumors
18 or suspicions, but I don't have evidence.

19 MR. NEWSOM: I have to admit, Your Honor, in my
20 lack of legal experience I did not frame the argument in
21 terms of the value being elusory, but instead equitable.
22 And I did not think it would be necessary to go down this
23 route because it seems to me that the debtors are aware,
24 given their disclosure statement, that the value of VGX may
25 have no value for its consummation if the smart contract is

1 not sold.

2 That by itself seems like indiscriminatory
3 treatment --

4 THE COURT: It may --

5 MR. NEWSOM: -- in the event -- in terms of
6 (indiscernible) recovery.

7 THE COURT: It may have no value. We usually
8 think of things that have some reported market value as the
9 market reflecting what their value is. It's what willing
10 people are willing to transact at.

11 What you've now said to me is that based on
12 trading volumes or perhaps people's desire to manipulate the
13 price, maybe that market is not a true market, but is
14 manipulated. But that's something that I would need
15 evidence to reach that conclusion and I don't have any. So
16 much of this --

17 MR. NEWSOM: I would be happy to provide it, but I
18 don't know how much time we have. But --

19 THE COURT: Well, we've already closed the
20 evidentiary record.

21 MR. NEWSOM: I'll make one final plea, Your Honor,
22 and then defer to your good judgment.

23 In Mr. Tishner's testimony he stated this. He
24 said, if I were an eTrade customer and I bought shares in GE
25 and eTrade got into trouble, then I would be upset if I

1 received something other than what I originally bought in
2 return.

3 That is what's happening here, Your Honor. I am
4 not receiving back what I bought in return in the event that
5 the VGX smart contract is not sold. I believe that there
6 are elements of this plan that are discriminatory based on
7 opportunities for recovery, whereas -- and this is important
8 -- other coin type actual utility have the ability to be
9 traded, sold -- I'm sorry -- used as a currency. VGX will
10 have none of that. And all of the value that is ascribed to
11 it right now is speculative in nature.

12 And when we flood the market with the VGX tokens,
13 it will only go to zero. I don't believe there is any
14 chance whatsoever for the value of VGX to go up beyond what
15 it is at today in the event the smart contract is not sold
16 and the market is flooded with the number of coins held on
17 the Voyager platform.

18 THE COURT: Okay. All right.

19 Thank you, Mr. Newsom.

20 Is there anybody else who wants to be heard on
21 unequal treatment or unfair discrimination objections?

22 Okay.

23 MS. OKIKE: Okay, Your Honor. I think we'll move
24 to the liquidation analysis next.

25 THE COURT: Why don't we do the releases?

1 MS. OKIKE: Releases?

2 THE COURT: While I have the energy for it.

3 MS. OKIKE: Sorry.

4 THE COURT: While I have the energy for it.

5 MS. OKIKE: Okay. Great.

6 (Laughter)

7 MS. OKIKE: Okay. So, Your Honor, we had a number
8 of objections to the third party release. As a threshold
9 matter, the plan does not propose a non-consensual third
10 party release. Any third party's direct claims against non-
11 debtors, to the extent such direct claims exist, are not
12 released unless such third party affirmatively consents,
13 which would be reflected in opting into the third party
14 release that was included on the ballots and in the notices
15 of non-voting status.

16 Your Honor, holders of claims in interest could
17 also affirmatively elect to contribute their direct claims
18 against third parties unaffiliated with the debtors to the
19 extent they have any to the winddown debtor, and the
20 winddown debtor will be vested with authority to pursue
21 those claims.

22 Your Honor, we did have a number of parties who
23 chose to affirmatively consent to the third party release
24 and to contribute their direct claims to the winddown
25 debtor.

1 Specifically, 65 percent or 40,112 claimants in
2 the voting classes opted into the third party release, and
3 85 percent or 726 of claimants in the non-voting classes
4 opted into the third party release.

5 52 percent or 31,878 claimants in the voting
6 classes chose to contribute their direct claims to the
7 winddown debtor, and 90 percent or 765 credits in the non-
8 voting classes contributed their claims to the winddown
9 debtor.

10 Your Honor, courts routinely approve consensual
11 third party releases to be included in a plan. Here, again,
12 the release is entirely consensual. We have not imposed a
13 release on holders of claims that voted in favor of the
14 plan. And so we believe that the third party release, to
15 the extent that a creditor affirmatively opted in should be
16 approved.

17 THE COURT: All right. I -- it seemed to me from
18 a lot of the objections that there was a misunderstanding of
19 who the releasing parties would be and the extent to which
20 creditors and regulatory bodies, governmental entities were
21 having releases of their own claims hoisted (sic) on them,
22 that certainly is an issue that is a hot issue in many
23 bankruptcy cases. But it's not really one here. There are
24 no non-consensual third party releases here.

25 So as to the releases being granted by non-debtors

1 here, is there anybody who still has an objection that they
2 need me to consider?

3 MS. DAGNOLI: Judge --

4 THE COURT: Yes.

5 MS. DAGNOLI: This is Lisa Dagnoli. I just want
6 to understand what you're saying.

7 Are you saying the third party releases include
8 the executives of Voyager and the CEO or we're not speaking
9 about that?

10 THE COURT: Well, you mean as beneficiaries of the
11 releases?

12 MS. DAGNOLI: I don't really know the difference,
13 I'm just going to be honest.

14 THE COURT: In any release, there is a person who
15 grants the release and there's a person in whose favor the
16 release is granted.

17 MS. DAGNOLI: So the important point here is that
18 the only people granting releases, other than the debtors
19 themselves of the debtor's own claims, the only people
20 granting releases are people who have voluntarily agreed to
21 do so. Nobody's being forced to do so.

22 So if you, for example, Ms. Dagnoli, owned a
23 direct, personal claim against Mr. Ehrlich, there is nothing
24 in what we're doing today that would purport to release that
25 claim or terminate that claim.

1 The debtors have their own claims. We'll get to
2 that in a minute because the debtors have proposed to
3 release their claims, and that may be of concern to people
4 who have derivative interests and the value of the debtor's
5 claims. But in terms of claims that belong directly to
6 third parties, nobody is being enforced to release anything.
7 They're just volunteering. And there was disclosure as to
8 who the people would be who would benefit from that release
9 and a certain number of people have elected to go ahead and
10 provide it.

11 MS. DAGNOLI: Okay. I'm sorry. Then I was going
12 to speak on not having liability releases for the executors,
13 and that's not what you're speaking about. So I'm sorry.

14 THE COURT: Yeah. Just to be clear, if a customer
15 has elected to grant the proposed release, then that
16 customer's claim against those executives has been
17 voluntarily released.

18 But the theory of the Bankruptcy Code is, you
19 know, that's something that was asked and granted
20 consensually by that particular creditor. That creditor can
21 make up his or her own mind as to whether to grant that
22 release or not and elected to do it.

23 I, quite frankly, would have no authority to tell
24 them no, that they can't. The case law in the Second
25 Circuit is quite clear that creditors can consent to

1 releases and, in fact, here the debtors are much more narrow
2 than has been approved in other cases. In many other cases,
3 simply voting in favor of the plan is deemed to be a consent
4 to the releases.

5 We don't have that here. People who voted for the
6 plan are not deemed to have consent to releases unless they
7 separately and explicitly and affirmatively opted into them.
8 So they are about as voluntary --

9 MS. DAGNOLI: Okay.

10 THE COURT: They're about as voluntary here as
11 they could be.

12 MS. DAGNOLI: Okay. I just wanted to go on the
13 record to say that I don't want to have any releases of
14 liability for fraud or, you know, negligence or anything
15 like that for the executives of Voyager or the CEO. And I
16 don't know where that would be put in, but that's what I
17 wanted to say.

18 Thank you, sir.

19 THE COURT: Okay. Well --

20 MR. NEWSOM: Your Honor, this is --

21 THE COURT: -- to the extent --

22 MR. NEWSOM: -- Dan Newsom, pro se --

23 THE COURT: -- to the extent --

24 MR. NEWSOM: -- creditor again --

25 THE COURT: -- to the extent, Ms. Dagnoli, that

1 you're objecting to somebody else giving up their direct
2 claim of fraud against Mr. Ehrlich, I'm not sure you have
3 standing to object to that. They've done it. They've
4 agreed to it. They made their own decision. It's not my
5 job or yours or anybody else's to tell them they shouldn't
6 have done it or that they can't do it. They've done it.

7 You certainly are entitled to be heard on whether
8 the debtors can or should release their own claims, but to
9 the extent, you know, somebody -- an account holder had a
10 claim or a shareholder had a claim of fraud and elected to
11 release it, well, that's what they're entitled to do. If
12 they don't want to pursue it, they don't have to. Okay.

13 MR. NEWSOM: Your Honor, this is Dan Newsom. This
14 is also in one of my specific requests for relief.

15 I would say -- and, again, I want to be brief out
16 of respect for time. I would say this, and I do understand
17 the difference between my direct claim as a creditor and
18 whether I opted in or not.

19 But as it relates to the releases of the estate,
20 they are overly broad. The investigation by the special
21 committee and the UCC's counsel were limited in scope.
22 They've admitted that they focused primarily around the
23 details of the (indiscernible). They did not investigate
24 the concerns raised by the FTC for, you know, misleading
25 fraudulent or (indiscernible) false claims, FDIC for

1 fraudulent claims. They did not investigate securities
2 fraud. They did not examine third parties that the estate
3 may have viable claims against that are currently being
4 released under the plan, such as (indiscernible), for
5 example, and out of an arrangement to produce an equities
6 platform that they did not follow through with. In fact, in
7 this own bankruptcy proceeding (indiscernible) platform was
8 in its infancy stage and Voyager routinely touted that as
9 something that was coming soon, as early as the first half
10 of 2022 or second half of 2022.

11 My point being they're releasing valuable claims
12 from the estate where we might have derivative claims, but
13 they could be more successfully pursued by the estate. And
14 I think they don't see any reason for it. It's not
15 necessary to effectuate the transaction, and we've been
16 given no consideration or the estate's been given no
17 consideration (indiscernible) creditors.

18 THE COURT: Okay.

19 MR. NEWSOM: I don't think they belong.

20 THE COURT: Just before we -- we'll come back to
21 that in a second, but I just want to see if there's anybody
22 else who wants to be heard on the releases by third parties
23 by people other than the debtors and the estate.

24 Is there anybody else who wants to be heard?

25 MS. DIRESTA: Hi, Your Honor.

1 THE COURT: Yeah.

2 MS. DIRESTA: Yeah, Your Honor. It's Gina DiResta
3 again, pro se creditor.

4 One of the problems I have with the releases --
5 and I agree with you. I do not care how anybody votes on
6 the release. That is every individual's choice.

7 But what I do care about is that people understand what
8 they're voting on. And the verbiage in that third party
9 release is so confusing that even I, with my 15 years of
10 legal experience and drafting 70 documents and contracts,
11 when I first read that release, I literally was like, wait,
12 what, and I had to read it multiple times slowly to really
13 understand what I was doing.

14 And other people in -- within the Voyager investor
15 community, because I am very active online and having talked
16 with a lot of different people or reading a lot of comments
17 that are out there, so many people said they did not
18 understand what they read. They were confused. They didn't
19 know how to vote.

20 There are people who literally voted and then
21 would get in like Twitter spaces or would message on social
22 media and say, hey, I checked off that box, that means I'm
23 saying -- I'm agreeing to getting my claims, right, that
24 means I'm going to get my money back. Like they -- like so
25 many people have different interpretations of the verbiage

1 of that release that to say that all 65 percent of people
2 who voted for it obviously agree with it. There's a lot of
3 people who didn't even understand what they're voting for.

4 And I think that was like one of the biggest
5 issues that I found from people and it's -- I mean, they
6 were like, I don't know what I'm voting for. And then for
7 them to, well, accidentally (indiscernible), I checked the
8 box. I didn't know what I was doing.

9 The secondary problem is they did not even know
10 that they could change their vote. The UCC has never made
11 it clear to creditors that they actually had the option of
12 changing their votes by simply going through the voting
13 process all over again. So a lot of people felt stuck.
14 They're like, oops, oh, well, kind of an attitude. And they
15 literally like wrote that online or verbally said that in
16 these Twitter spaces.

17 So that's the thing that I would like to argue is
18 I feel like the verbiage was confusing and kind of
19 deceptive, and people really didn't understand what they
20 were voting for.

21 THE COURT: Well, under the bankruptcy rules when
22 a release is being sought, it's got to be highlighted. And
23 somebody remember me -- remind me what the rule number is.
24 I -- does it require that you quote the provision
25 specifically?

1 MS. OKIKE: I think it has to be bolded and
2 highlighted.

3 (Pause)

4 THE COURT: I think it's Rule 3016(c) as to
5 injunctions, but isn't there a similar provision as to
6 release?

7 Well, in any event, the ballots that were approved
8 here and the description of the releases were the subject of
9 motions that were considered in January. And they were
10 approved by me after people had a chance to be heard as to
11 whether they were sufficient or not. They are in line with
12 the same kinds of information and same kinds of texts that
13 we've given to people in other cases.

14 You know, there's a constant push and pull in
15 bankruptcy between, on the one hand people will say it's not
16 simple enough and in plain English I can't understand it,
17 and then on the other hand if you try to do something in
18 simple and plain English you get complaints that you haven't
19 been clear enough as to the full details.

20 We can't do it both ways. And so we try to make
21 sure that the full information is there so that people can
22 see it. If anybody thought that they were doing anything
23 other than granting a release, I'm not sure how they could
24 have been confused unless they simply didn't read because it
25 says, you're granting a release. It says you don't have to.

1 You're doing it voluntarily, but you're granting a release.

2 So I'm not going to back and say that this whole
3 process has to stop and is no good because of the way the
4 releases were presented. I think they were presented
5 fairly.

6 Okay. So I think we should move onto the releases
7 by the debtors. And, you know, there's some validity to
8 what Mr. Newsom has just said. You've proposed very broad
9 releases and at least one specific settlement in the form of
10 the deal with the -- Mr. Psaropoulos and Mr. Ehrlich.

11 But the testimony by Mr. Pohl was that his
12 committee looked at potential claims against insiders, not
13 even being very clear about who that was.

14 I know that the debtors in their statement of
15 financial affairs defined insiders as people who had actual
16 authority over the disposition of assets of the debtor,
17 which means a relatively narrow group. And yet you've
18 proposed very broad releases as to professional persons, all
19 persons who were employed by the debtors during the course
20 of the case. These are releases that would go beyond
21 insiders as I read them. It would cover members of the
22 creditors' committee who certainly are not debtor insiders
23 as that term is used.

24 The description of the claims that are being
25 released are -- I detected no effort to kind of confine it

1 to what the independent committee had actually looked at.
2 Rather, just the very terms of the release suggest that
3 somebody sat down and tried to make it as indisputably broad
4 and all encompassing as was humanly possible.

5 It would appear to cover preference claims, for
6 example, so that customers who weren't employees would be
7 subject to preference claims, but committee members and
8 employees would not, even if they had made similar
9 withdrawals from their accounts. And in terms of whether
10 there's justification of that, I didn't hear a peep of
11 evidence to support it.

12 So how can I, based on the record that I have, how
13 can I support the breadth of the releases that you've
14 proposed?

15 MS. OKIKE: Your Honor, may I confer with our co-
16 counsel for one moment?

17 (Pause)

18 MR. GOLDBERG: Your Honor, pardon me for
19 interrupting.

20 THE COURT: Yes.

21 MR. GOLDBERG: May I be excused to continue
22 discussions with my client about the issues we've --

23 THE COURT: Yes. Please --

24 MR. GOLDBERG: Thank you.

25 THE COURT: -- go ahead.

1 (Pause)

2 THE COURT: We'll break for ten minutes while you
3 have your discussions. Okay.

4 (Recessed at 3:06 p.m.; reconvened at 3:23 p.m.)

5 THE COURT: Okay. Are we ready to continue?

6 MR. KIRPALANI: Yes, Your Honor, thank you. For
7 the record Susheel Kirpalani from Quinn Emmanuel Urquhart &
8 Sullivan on behalf of the special committee of the debtors,
9 Voyager LLC to be precise.

10 Judge, I want to tell you what we did do as well
11 as what I understood Mr. Pohl's testimony to be about
12 insiders. Mr. Pohl didn't equate his definition of insiders
13 with anything in the statement of financial affairs
14 definition that determine insiders under the Bankruptcy
15 Code, which is how he meant it and used it, is directors and
16 officers.

17 And I can tell you what we did do, and I can also
18 give you some comfort on the direct -- on the scope of the
19 released parties under Section 136 of the plan, definition
20 136 of the plan.

21 First just to get it out of the way, the reference
22 to committee members being released from preference
23 liability, that's not how the plan works. The defined term
24 released parties means, and I'm quoting from it,
25 collectively in each case in its capacity as such, and then

1 it refers to the committee and each of the members thereof.

2 So a member of a committee, his capacity as such
3 is incapable of receiving preference, because all of that
4 activity happened post-petition. So just to give customers
5 comfort, nobody who sat on the creditor's committee is in
6 the release of potential preference liability. If there was
7 any (indiscernible) committee.

8 We did not look at potential exposure of committee
9 members because we on behalf of the special committee we're
10 not releasing them. It's not true that the only focus of
11 the special committee's work was to look at the 3AC loan.
12 We did look at the statements that were made to the FDIC.
13 We did look at the statements that were made to customers
14 generally and press releases that were made generally and
15 Mr. Pohl did explain that in his testimony.

16 But those do not give rise to causes of action in
17 favor of the debtor. If the debtor had misled the
18 customers, in order to obtain more assets to grow the
19 business, that does not create a cause of action that the
20 debtor has against the officer or director for pursuing that
21 strategy.

22 It may give rise to a cause of action in favor of
23 a customer who received, for example, a text message from
24 Mr. Ehrlich or an equity holder who received a text message
25 or an e-mail from Mr. Ehrlich, of course, we're not

1 releasing that. That belongs to those individuals and we
2 take that very seriously.

3 With respect to the preferences that have been
4 mentioned on behalf of directors and officers we did look at
5 transfers made to directors and officers. They're detailed
6 in the statement of financial affairs. And we did note
7 there were two bonus payments. We looked into them, they
8 were not preferential, they were ordinary course of
9 business, but we still got a reversal of Mr. Ehrlich's bonus
10 as part of the consideration for the overall settlement.

11 THE COURT: But the schedules listing payments to
12 insiders only listed dollar payments and not account
13 withdrawals.

14 MR. KIRPALANI: Thank you, Your Honor, I'm coming
15 to that.

16 THE COURT: Whereas it seems quite clear from the
17 position the debtor has taken about who owned the property
18 that account withdrawals are preferences or might be
19 preferences anyway.

20 MR. KIRPALANI: That's true, Your Honor, and we
21 did look at potential preference liability of directors and
22 officers for withdrawing their crypto assets off the
23 platform. There were no such withdrawals within the 90 days
24 prior to bankruptcy.

25 Now, of course, we know that insiders as defined

1 in the Bankruptcy Code does a look back period of one year,
2 not 90 days and we did look at withdrawals of crypto assets
3 off the platform beyond 90 days up to one year.

4 There were a handful of withdrawals beyond the 90
5 day period, but those same individuals also put more assets
6 on the platform during the 90 day period, did not give any -
7 - give rise to any suggestion of any impropriety or
8 favoritism or they knew something the market didn't.

9 At the time of those withdrawals the market
10 capitalization for Voyager was over \$700 million. And so
11 the notion that the estate should expend funds to try to get
12 what would have amounted to \$500,000 worth of transfers, to
13 try to prove insolvency during the period in the end of
14 March and early April, that is beyond the 90 day period with
15 that, but within the one year period just seems cost
16 prohibitive and not a wise use of resources. And so that's
17 the rationale why directors and officers --

18 THE COURT: Why can't the plan administrator make
19 that decision? What do you need a release for? If it's
20 just a question of whether a claim is worth pursuing and not
21 something you're getting any consideration for, why are you
22 granting the release?

23 MR. KIRPALANI: Well, it is the business judgment
24 of the special committee to grant the releases that were
25 proposed in the plan and --

1 THE COURT: And my question is why.

2 MR. KIRPALANI: These individuals served post
3 bankruptcy, I want to be very clear about that, Your Honor.
4 There is no director or officer or employee, for that
5 matter, that's getting a release that didn't serve the
6 estates post bankruptcy.

7 There are directors and officers that were not
8 part of this organization on the commencement of Chapter 11,
9 they are not getting releases. They are not defined as a
10 released party.

11 And when this company filed part and parcel of
12 encouraging folks to stay aboard, work with the debtors,
13 maximize value for customers, was that releases were going
14 to be proposed and if they were appropriate, meaning that
15 there was no wrong doing or no viable causes of action
16 against them, then it would be set up for both by creditors
17 to see if that plan was confirmable and if it was approved.

18 THE COURT: I have no evidence of that.

19 MR. KIRPALANI: You don't have evidence that the
20 plan was sent up for --

21 THE COURT: No, I have no evidence that these
22 employees were told that releases would be sought in
23 exchange for their continued service. I have zero evidence
24 of that.

25 MR. KIRPALANI: Mr. Renzi (ph), I believe in his

1 declaration --

2 THE COURT: I also don't have any disclosure to
3 anybody of just what potential claims are being given up in
4 exchange for that, just what withdrawals they might have
5 made. I have conclusory remarks about it today, I have
6 nothing. I have a suggestion that releasing them from
7 preference claims that have never been described were
8 somehow part of the deal about which I have no evidence.

9 MR. KIRPALANI: I believe Mr. Renzi (ph) testified
10 of the importance of the employee base for this organization
11 and for keeping this sale process together. And that is in
12 his declaration and it was part of his live testimony as
13 well.

14 I don't -- I think you're correct, Your Honor,
15 that there was no specific mention by Mr. Renzi or Mr. Pohl
16 or Mr. Tiffner (ph) that employee X was told, if you stick
17 around, you know, it'll be worth it because we'll be able to
18 obtain global peace from this bankruptcy in exchange for
19 your hard work and your efforts, but I think it is --

20 THE COURT: What about the scope of the release,
21 which seems, you know? The release has provisions in it
22 like anything that you ever did that has any bearing on any
23 claim that anybody ever had against the debtor you're
24 released from. Your investigation didn't go that far,
25 right?

1 MR. KIRPALANI: That's true, Your Honor.

2 THE COURT: So why give a release of that breadth?
3 Seems like a gift, a throwaway. Somebody decided we're
4 going to make this as broad as possible, kind of untethered
5 by any actual investigation or review that had been done.

6 MR. KIRPALANI: I can't stand here before you and
7 tell you that we looked at every employee and what they did
8 to everybody in every way, but over the course of --

9 THE COURT: That's literally, if you read through
10 the release, I mean, I'm not sure I've ever read a release
11 that has as many terms as this one, to kind of try to round
12 out the corners of just how the broad release is. And
13 there's no way, I don't care how broad your charter was,
14 there's no way you could have investigated all of those
15 things.

16 And certainly, in terms of evidence that these are
17 reasonable, that they're actual claims, or that there's been
18 actual consideration by the company of the risks and rewards
19 or pursuing claims on these things, no, there isn't.
20 There's just an effort to make the releases as broad as
21 possible, that's not enough.

22 I'm supposed to -- I may be required to some
23 extent to defer to the company's judgment as long as it's
24 reasonable, and so long as the other standards make sense,
25 but implies that a judgment has been made. And the only

1 judgment made here was, let's free the employees. I don't
2 see any investigation of the full amount of claims for which
3 people are supposed to be getting releases, it's just not
4 there.

5 MR. KIRPALANI: And we did look at the directors
6 and officers, Your Honor.

7 THE COURT: Yeah, I understand.

8 MR. KIRPALANI: Respectfully --

9 THE COURT: That's a different matter. You did
10 look at the directors and officers. I don't know that I can
11 free them from preference claims because I don't have any
12 information about that, but I know you did look at the 3AC
13 loans, but let's just stick with the other releases.

14 I just -- you know, if I'd had some evidence maybe
15 it would've come out differently, but I just don't have it.
16 I think we have to carve them back. That's not to say that
17 the plan administrator has to sue these people for
18 preferences, for example. The plan administrator can decide
19 whether it makes sense or not. But I certainly don't have
20 evidence that would allow me to say that it is so clearly
21 without sense, that it should just be released.

22 MR. KIRPALANI: I understand, Your Honor.

23 THE COURT: Okay.

24 MR. KIRPALANI: Do you want me to continue with my
25 argument about the directors and officers' releases?

1 THE COURT: Go ahead, yes.

2 MR. KIRPALANI: So as Your Honor just covered I
3 believe with Ms. Okike, there is no -- I want to talk for a
4 moment what's not being released, to try to alleviate any
5 kind of tension that may exist.

6 There are no non-consensual third party releases.
7 Customers, creditors and regulators will retain their rights
8 to sue under they have permanently opted in to releases of
9 their own. Their rights to sue people, if any, exist are
10 not impaired by the settlement and by the releases by the
11 estate on the plan.

12 And I wanted to emphasize that, because Mr. Pohl
13 last week was asked questions by customers that really
14 related to non-estate claims, including some of the things I
15 mentioned earlier about statements made to the market,
16 statements made to securities holders, statements made to
17 customers through e-mails, through text messages, through
18 press releases.

19 To the extent, anyone has a direct cause of action
20 and I'm not saying they do, to the extent that they do
21 against individuals, those claims are not released. To the
22 extent they have claims against the debtor, those claims are
23 not released except as part of the discharge and release
24 that will be receiving a dividend pursuant to the plan.

25 Second, the estate that I mentioned, is not

1 releasing former officers, former directors, or former
2 employees, who did not serve the Chapter 11 estate at all.

3 Third, the estate is not releasing Mr. Ehrlich or
4 Mr. Psaropoulos from the breach of fiduciary duty of care
5 claims relating to their decision to make the 3AC loans.
6 The issue is one of recourse but not on releasing the claim
7 itself.

8 As Mr. Pohl testified, the special committee
9 determined after a comprehensive investigation that was done
10 hand in hand with the statutory creditor's committee that
11 these breach of fiduciary duty claims are colorable,
12 cognizable and they should be released.

13 Fourth, the estate is not releasing Alameda or the
14 insurance company that received millions of dollars on the
15 eve of bankruptcy or any other third parties for anything.
16 All of those claims are being retained pursuant to Section
17 1123(b) (3) of the Bankruptcy Code by the plan administrator
18 and will be prosecuted or not based on that individual's
19 cost benefit analysis.

20 So while we determined that the estate may have
21 cognizable claims against Mr. Ehrlich and Mr. Psaropoulos,
22 the special committee decided in their business judgment
23 acting independent of any connection whatsoever with the
24 board members, the officers being investigated, counsel for
25 the debtors, to pursue a settlement with respect to these

1 individuals personally assets.

2 THE COURT: So as to Mr. Ehrlich and Mr.
3 Psaropoulos, did I pronounce that correctly?

4 MR. KIRPALANI: Yep.

5 THE COURT: You've proposed an actual settlement
6 that includes a release and I do understand if you want to
7 settle claims against a party it's often part of the
8 discussion that there be a release. But you've preserved
9 certain claims as to the insurance and 3AC, but you've
10 released all others against not only Mr. Ehrlich and Mr.
11 Psaropoulos, but all other officers and directors, not as
12 part of a settlement with them or any demonstrable or
13 identified consideration from them, but just a release.

14 MR. KIRPALANI: The demonstrative -- the
15 demonstrated consideration was to prevent dissipation of the
16 potential distributions of other customers by having
17 indemnification claims filed by those officers and directors
18 for frivolous claims that would have been brought.

19 There was concerted effort and investigation into
20 all of the directors and officers in connection not just
21 with the 3AC loan, but in potential with all of the
22 historical transactions, at least of a magnitude that
23 requires spending time to look into them, as well as press
24 releases, messaging by the company, et cetera, to see are
25 there any claims against these individuals. Because all of

1 them have indemnity obligations from the company. All of
2 them were exculpated and indemnified pursuant to the
3 operating agreement of the company.

4 And the sea suite (ph) level managers even had
5 separate indemnification agreements from the company that
6 would become more general unsecured claims. As well as the
7 fact that all of those individuals would also tap into the
8 D&O insurance, which is what we desperately are trying to
9 preserve.

10 And we're happy that today there's still the full
11 \$20 million of coverage available for the plan
12 administrative to attempt to negotiate at least a decent
13 settlement from, if not fully litigated against the carrier
14 and the individuals, Mr. Psaropoulos and Mr. Ehrlich because
15 they are the ones where the buck stopped. They were the
16 ones who had potential liability.

17 THE COURT: Who was in the officer and director
18 group that you looked at besides Mr. Ehrlich and Mr.
19 Psaropoulos?

20 MR. KIRPALANI: All of them. The chairman, Mr.
21 Philip Atan (ph), Ryan Wooley (ph), I remember because I
22 remember he's specifically not a director or an officer, but
23 he's a senior member of management, might be considered an
24 insider.

25 Dave Brosgol, general counsel, Gerard Hanshe as

1 well, just going off my memory. Let me take a closer look
2 here. Ashwin Prithipaul, the chief financial officer,
3 Marshall Jensen, Pam Kramer (ph), Stephen Ehrlich I
4 mentioned already and Evan Psaropoulos I mentioned already.

5 Misha Milani (ph) -- one second, Your Honor.
6 Yeah, Mr. Slater (ph) reminds me it were the individuals
7 that were interviewed, the 12 individuals that were
8 interviewed, who we interviewed for any potential wrongdoing
9 and they were all disclosed in the disclosure statement by
10 name.

11 THE COURT: Okay.

12 MR. KIRPALANI: So as I was saying, Your Honor,
13 the special committee decided to pursue potential settlement
14 discussions with Mr. Ehrlich and Mr. Psaropoulos in the hope
15 that we could accomplish a few goals. First, get whatever
16 personal assets are liquid and get it all from these
17 individuals, that we can get consensually.

18 Assuming it was a sizeable chunk from what
19 otherwise we could collect, it might be worth pursuing that.
20 That was goal number one.

21 Goal number two, minimize or get the waiver of
22 claims by those individuals against the estate because
23 that's currency that they could trade, that they could get.
24 And third, preserve the D&O coverage to the extent possible
25 and specifically with respect to that bizarre eve of

1 bankruptcy side A policy, could we get them to agree not to
2 look to that policy, until after the plan administrative has
3 had its day in court or a conference room to negotiate with
4 the D&O carriers, and we got that too, Your Honor.

5 So the -- all three of those goals were met by the
6 special committee. Significant to Mr. Pohl's analysis was
7 that there was no evidence of self dealing, in connection
8 with making the loans to 3AC. These officers would have
9 been entitled or would be entitled to business judgment --
10 the business judgment rule shield of liability.

11 Also, as Mr. Pohl mentioned, Voyager Digital's
12 operating agreement gave these individuals broad exculpation
13 and they enjoyed broad indemnification rights that were
14 provided by separate contracts with the debtors.

15 Mr. Pohl testified in his rule book they didn't
16 conduct sufficient due diligence on making the 3AC loans.
17 But if the special committee pursued litigation, he
18 explained that we would need to prove that the acts and
19 omissions were not just negligent, but they were grossly
20 negligent and there was no evidence of willful misconduct.

21 Could they have been grossly negligent?
22 Potentially, yes, potentially. There is a gray area between
23 willful misconduct -- I'm sorry, between gross negligence
24 and negligence. But what we've determined and what Mr. Pohl
25 testified is that both of these men had a keen interest in

1 the success of Voyager. If Voyager did well, they did well.
2 If Voyager failed, so too would their careers and their
3 personal investments kept on the platform, as well as their
4 equity investments.

5 Even if a plaintiff could prove that their acts
6 and omissions were grossly negligent, the plaintiff would
7 still need to prove that it's that gross negligence that
8 caused the losses to the estate, when by all acts and by all
9 indications and as Mr. Pohl testified, his view, the estate
10 was defrauded by 3AC and its founders.

11 And even if the plaintiff could surpass those
12 hurdles and obtain the judgment against those individuals,
13 after undoubtedly incurring significant costs and expenses,
14 Mr. Ehrlich and Mr. Psaropoulos simply did not have the
15 personal assets that satisfied any significant judgment.

16 And Mr. Pohl testified that we did look at their
17 (indiscernible) assets and the states in which they lived to
18 see are these community property estates and they are not.

19 So after doing all that, we still weren't prepared
20 to let them walk for nothing, so we decided --

21 THE COURT: No, I understand the case as to the
22 settlement with Mr. Ehrlich and Mr. Psaropoulos and I
23 understand that that's the one that's going to bother some
24 of the customers the most, but I do understand that it has
25 been looked at, it has actually been considered, it has

1 actually been weighed. You offered me the evidence and I
2 understand what the company standards are and the limits of
3 my authority as to what I can do as to that. And I really
4 want to set that settlement aside and just make sure that
5 the rest of the releases make sense.

6 As to the other members of the trove who you've
7 interviewed, you said that the reason for the releases that
8 it prevents a frivolous depletion by the assertion of claims
9 that might be subject to indemnity. Well, but these are the
10 debtor's claims. So who's going to make a frivolous
11 assertion of claims on behalf of the debtors?

12 MR. KIRPALANI: Well, I mean the charge for the
13 special committee was to determine whether there are any
14 non-frivolous claims to be brought. So they made that
15 determination and determined that there are no non-frivolous
16 things that could be brought, and so therefore, the releases
17 of those individuals is --

18 THE COURT: But I think we've also made clear that
19 you did not and could not possibly have looked into claims
20 relating to all of the kinds of things that are covered by
21 that release.

22 MR. KIRPALANI: We looked at the -- obviously the
23 3AC loan was a primary focus as Mr. Pohl testified and it
24 was. It is the reason this company wound up in bankruptcy.
25 As for disclosure to customers, dealings with the FDIC,

1 dealings with regulators, we did look at all of those as
2 well, as to whether the estate, the company would have a
3 cause of action against its own officer, its own director
4 under the terms of the operating agreement, there's no such
5 claim for those types of conduct.

6 THE COURT: Okay. Let me say that as to the
7 proposed settlement with Mr. Ehrlich and Mr. Psaropoulos,
8 the standards that I am obligated to apply are for me to
9 assess whether it is in the range of reasonableness, based
10 on likelihood of success, possibility of recovery, et
11 cetera, I do think that the evidence that you have given me
12 which while the conclusion has been disagreed with, the
13 actual evidence has not been controverted.

14 I think that supports the settlement and I'm sure
15 that's going to be an enormous disappointment to many of the
16 account holders on the phone, but I think that the evidence
17 is going to compel me to that conclusion.

18 I'm much less convinced, the scope of the releases
19 as to the other insiders and certainly not at all convinced
20 as to the scope of the releases as to people who may not
21 have even been the subject of your investigation. Let me
22 hear from the U.S. Trustee because they had objections on
23 this point.

24 MR. KIRPALANI: Thank you.

25 THE COURT: Thank you.

1 MR. MORRISSEY: Thank you, Your Honor, good
2 afternoon. Richard Morrissey for the U.S. Trustee.

3 Just so it's clear, Your Honor is talking about
4 debtor releases, they're all third party releases, they
5 cover --

6 THE COURT: Third party releases were voluntary,
7 they cover what they cover. I'm not undoing any of those.

8 MR. MORRISSEY: Okay. Your Honor, the releases in
9 the Chapter 11 cases can be brought, but there's a limit as
10 to how broad they can be. And the -- as Your Honor has
11 stated here, it covers a lot of ground and too much ground.
12 And there was not consideration given in exchange for some
13 of those releases and I'm speaking specifically of retained
14 professionals, for example, who are covered by the way by
15 exculpation, which we'll be talking about later. And also
16 all the employees of the debtor.

17 So I believe, Your Honor, that the releasees
18 should be circumscribed as pretty much in line what Your
19 Honor just said.

20 Your Honor, there's a lot of overlap between the
21 exculpation provisions and the release provision. I can
22 certainly wait to discuss the issues we have there. But,
23 Your Honor, on the third party releases, just one point I
24 wanted to make.

25 The debtors have agreed to leave something from

1 the third --

2 THE COURT: Okay.

3 MR. MORRISSEY: -- released party and that would
4 be the wind down debtor, because we believe, Your Honor,
5 that releases should not be applied prospectively. And we
6 do believe that only the people who have been involved in
7 the case between the petition date and the effective date --

8 THE COURT: Okay.

9 MR. MORRISSEY: -- should be covered.

10 So with that, Your Honor, I'll -- I guess I'll
11 wait until exculpation.

12 THE COURT: Well, let's do it together, to the
13 extent that you're complaining about releases of
14 professionals, or I suppose, committee members. I do think
15 the exculpation here, the provision was too broad as -- at
16 least as set forth in what I've seen. I don't know, I
17 haven't gotten through all the different iterations of the
18 confirmation order that you've submitted, but you know what
19 I did in the Aegean case, which was narrower and are you
20 suggesting more than that here, and if so, why?

21 MR. MORRISSEY: The answer to that is, no, Your
22 Honor. We -- as a matter of fact we --

23 THE COURT: I'm sorry, I was asking them.

24 MR. MORRISSEY: Oh.

25 THE COURT: That's all right.

1 MS. OKIKE: No, Your Honor, we tried to be
2 consistent with Aegean, but if we weren't successful in that
3 we're happy to (indiscernible).

4 THE COURT: Okay. What I read in the plan seemed
5 much broader than what I had done in Aegean.

6 MR. MORRISSEY: Your Honor, would you like me to
7 allow Ms. Okike to respond?

8 THE COURT: To that question only, yeah, but stay
9 where you are at the podium and I'll hear you.

10 MS. OKIKE: Your Honor, we tried to limit it to,
11 you know, transactions and orders that Your Honor has
12 approved in connection with, you know, various negotiating,
13 executing, implementing transactions in connection with
14 these Chapter 11 cases. That was our intention.

15 THE COURT: Okay. I don't know, maybe I'm
16 remembering something wrong, but I thought when I looked at
17 it that the exculpation language was significantly broader
18 than what I had done in Aegean.

19 MR. MORRISSEY: Your Honor, we thought so too and
20 as a matter of fact, we actually came to an agreement that
21 debtor's counsel on certain parts of that exculpation
22 provision.

23 THE COURT: Okay.

24 MR. MORRISSEY: And I think that should narrow the
25 issue --

1 THE COURT: Very good.

2 MR. MORRISSEY: -- before Your Honor.

3 THE COURT: So is there any remaining issue on the
4 exculpation?

5 MR. MORRISSEY: There is some.

6 THE COURT: Okay.

7 MR. MORRISSEY: Not nearly as much as there was
8 originally.

9 THE COURT: All right.

10 MR. MORRISSEY: (indiscernible) that, Your Honor.
11 Your Honor, I already mentioned the professionals
12 being on the list of both released parties and exculpated
13 parties.

14 THE COURT: Yeah.

15 MR. MORRISSEY: We don't have a problem with them
16 being on the list of exculpated parties. I just wanted to
17 make that clear. The plan also provided for not only
18 prospective releases to entities that didn't exist or
19 individuals, but also the exculpation provision does the
20 same thing.

21 The -- we had an issue that we did resolve, Your
22 Honor, regarding the special committee since Mr. Kirpalani
23 just spoke, I figured I'd raise that first.

24 The special committee itself was actually -- I'm
25 sorry, not committee, the special committee investigation

1 itself was among the exculpated parties. And in response to
2 the U.S. concern about that, debtors proposed that the Court
3 -- if the Court approves the settlement or transaction, to
4 use Your Honor's language, the parties to that settlement or
5 transaction so that the investigation itself can be part of
6 the exculpation provision.

7 So I think we have an agreement on that, Your
8 Honor, as long as its tied to the Aegean standard of the
9 Court approved settlement or transaction.

10 THE COURT: Okay.

11 MR. MORRISSEY: The debtors have also agreed that
12 to add a provision that nothing in the plan shall limit the
13 liability of professionals to their clients, pursuant to New
14 York comp codes and regulations, Rule 1.8(h). It's
15 basically the idea --

16 THE COURT: I'm familiar with that --

17 MR. MORRISSEY: -- (indiscernible) professionals.

18 THE COURT: I understand it.

19 MR. MORRISSEY: So the -- one issue we have
20 regarding exculpation is that we still have, is that the
21 distribution agent which is the same finance, is listed
22 among the exculpated parties. This we believe is an
23 improper perspective release and effectively shields the
24 distribution agent from future, which is to sale post sale,
25 post effective date conduct.

1 And we would ask that the distribution agent be
2 stricken unless the Court wants to apply the Aegean standard
3 to narrow that release for the distribution agent, related
4 to carrying out the Court's orders.

5 I can -- I was going to go on to other issues but
6 I can stop now and allow counsel to respond.

7 THE COURT: Well, I'll hear from the debtor's
8 counsel on the proposed exculpation or releases as to the
9 distribution agent.

10 MS. OKIKE: Your Honor, with respect to the
11 distribution agent, the distribution agent is going to be
12 taking certain actions in connection with effectuating the
13 transactions that Your Honor is approving under the plan.
14 And we think particularly in this case, you know, dealing
15 with some of the comments by the governmental entities they
16 should be protected as, you know, in the capacity when
17 they're acting as a distribution agent under the plan. It
18 essentially (indiscernible) that Your Honor has approved.

19 We know that you approved something similar in the
20 Fairway case and we tried to model that in the plan as well.
21 We think it's appropriate in this case, given that the
22 distribution agent is a fiduciary acting on behalf of the
23 debtors, in connection with consummating the transactions
24 under the plan.

25 THE COURT: Okay. Have you shared that language

1 with Mr. Morrissey? Is there a continued objection to it?

2 MS. OKIKE: I think this -- I don't want to speak
3 for Mr. Morrissey, but I think he categorically opposes an
4 entity that doesn't come into effect until after the
5 effective date from receiving an exculpation. And I think
6 we just have a disagreement given the rule that the
7 distribution agent will play, in addition prior to the
8 effective date and getting ready to actually effectuate the
9 transactions.

10 MR. MORRISSEY: Your Honor, Richard Morrissey
11 again for the U.S. Trustee. To be candid, Your Honor, I
12 don't remember exactly what the language of the Fairway
13 provision was, because (indiscernible) in fact provided to
14 us a while ago.

15 All I can go by, Your Honor, what I'm reading here
16 in the (indiscernible) as far as whether it's being
17 exculpated and who is exculpated. This is not an estate
18 fiduciary that's being exculpated here, the distribution
19 agent. We do recognize as Ms. Okike said, there's certain
20 things that the -- that finance or the distribution which it
21 has to do in order to carry out the plan. But the --

22 THE COURT: Yes, they do it --

23 MR. MORRISSEY: -- exculpation goes beyond that.

24 THE COURT: They do it -- well, in what way are
25 they not a fiduciary under my order, they receive these

1 assets in trust and they distribute them in trust, so how
2 are they not a fiduciary?

3 MR. MORRISSEY: Well, Your Honor, they're
4 (indiscernible) to the extent that they are fiduciaries
5 (indiscernible) where the exculpation is not.

6 THE COURT: Well, I don't have the problem if you
7 want to -- yeah, I'm not going to give him exculpations for
8 anything that they do, right. For heaven sakes, if they
9 steal assets, I'm not exculpating them from that. But in
10 performance of the tasks that I have approved and the
11 faithful performance of the duties or of the agreements that
12 I have approved, why should they be liable? And the same
13 thing I said this morning, you know, they're going to have -
14 - once I order them to do these things, they're going to
15 have a statutory obligation to do them, right?

16 MR. MORRISSEY: Yes, Your Honor, but not
17 everything that they do is going to be within the Court's
18 purview. So if there's signed agreements, for example,
19 things like that --

20 THE COURT: Surely you can come up with language
21 that makes clear that all we're really doing is saying
22 they're exculpated to the extent that they faithfully
23 perform and execute the transactions that I have approved an
24 the duties that I have assigned to them, right? If that's
25 not the perfect language, you should surely can come up with

1 some.

2 MR. MORRISSEY: We will do that. Thank you, Your
3 Honor.

4 Your Honor, the next issue --

5 THE COURT: Before we go to the next issue, just
6 hang on one second. Just one second.

7 Before we go to the next issue, where do we stand
8 on the one that is nearest and dearest to my heart, which is
9 whether I have to do a confirmation order by this evening?

10 MR. GOLDBERG: Your Honor, I think we have someone
11 --

12 THE COURT: Just wait, please.

13 MR. GOLDBERG: We had some ongoing discussions
14 that we had with the debtor and the committee regarding Your
15 Honor's request on that point as well. And so the next
16 break I'll speak with them and hopefully (indiscernible).

17 THE COURT: Okay. Whoever was speaking on the
18 line. Who was it?

19 MR. BARNEA: Sorry, this is J.D. Barnea from the
20 U.S. Attorney's Office. I spoke earlier this morning about
21 the exculpation clause.

22 THE COURT: Right.

23 MR. BARNEA: I just wanted to note for the record
24 our continued objection to this entire enterprise and to
25 note that in the initial proposed order that would have

1 approved the plan in this case, it would have carved out the
2 government from the exculpation provision, it was only the
3 revised proposed order that was proposed for the first time
4 on the morning, on Thursday morning at the beginning of the
5 confirmation hearing that purported to undo the appropriate
6 carve out for the government from the exculpation clause.

7 That is why we objected that same day and the
8 letter that I sent. And that's why in our letter we asked
9 for an opportunity to fully brief the issue of whether
10 exculpation is appropriate in this case as against the
11 government.

12 We understand, Your Honor, that you've decided the
13 Aegean case, a decision that we don't necessarily agree with
14 on the government's side, but we wanted an opportunity to
15 submit fully our arguments as to why an exculpation as
16 against the government is inconsistent with any number of
17 constitutional provisions that's been consistent with the
18 Bankruptcy Code, it's been consistent with the District
19 Court's decision in the Perdue case and in many other
20 provisions that we could explain if we were permitted to
21 submit a full brief.

22 Again, time prevented us from doing so, although
23 we're working on as we speak and are prepared to submit one
24 perhaps even this afternoon or tomorrow, but we didn't want
25 to lose the opportunity to object and to preserve our

1 appellate rights if necessary to the perspective exculpation
2 of debtors and non-debtors as to many tasks that may or may
3 not violate all sorts of obligations they may have to the
4 government and others.

5 And so we just wanted to put that on the record.
6 We understand, Your Honor, that the Court has already spoken
7 a little bit to that this morning, but we really would like
8 the opportunity to submit our arguments in writing, before
9 the Court enters any final order.

10 We also don't -- haven't seen any final order yet.
11 We understand that they're going to be working on that, so
12 we'd like the opportunity to see that language before it's
13 approved by the Court and to submit our written objections
14 to it.

15 THE COURT: Okay.

16 MR. MORRISSEY: Your Honor, just to add what
17 counsel had just said. I thought it would be helpful to
18 point out to Your Honor where the new language appears,
19 because it's not actually with the exculpation language
20 itself. It's separate. And I hesitate to say the most
21 recent version of the plan, I think this is. It's Article
22 6, provisions governing distributions, Subsection B, which
23 is called power -- rights and powers of distribution agent.

24 And then Subparagraph 1, powers of the
25 distribution agent, the debtors added a paragraph and I

1 believe that's what Mr. Barnea was referring to.

2 THE COURT: Okay.

3 MR. MORRISSEY: Your Honor, I was going to
4 continue. I didn't know if anyone else wanted to comment on
5 the exculpation regarding the distribution agent.

6 THE COURT: Go ahead.

7 MR. UPTEGROVE: Your Honor, William Uptegrove on
8 behalf of the United States Securities & Exchange
9 Commission, if I may.

10 THE COURT: Yes.

11 MR. UPTEGROVE: Your Honor, I don't have any
12 further argument on the issue of exculpation per se, but did
13 want to clarify a couple of points, I think including the
14 provision of the plan that the U.S. Trustee was just
15 mentioning.

16 So I understand that the Court wants to
17 (indiscernible) the exculpation language consistent with its
18 standard language particularly used in the Aegean case. We
19 just wanted to confirm that the portions of the three
20 paragraphs in our objection filed this morning will be
21 stricken as inconsistent with, you know, the Aegean standard
22 and will be applicable law that Your Honor discussed this
23 morning.

24 THE COURT: I don't have --

25 UNIDENTIFIED: Your Honor --

1 THE COURT: I don't have all that language in
2 front of me, but I think that's right.

3 MR. UPTEGROVE: And I think -- I don't have the
4 full plan in front of me, but I think the U.S. Trustee, I
5 think that it's -- we're talking about the same provision.
6 I see it here as page 69 and 70 of the PDF of 158 of Docket
7 No. 1138. There's a -- there's similar language to what
8 we've been (indiscernible) confirmation. It's a little
9 different, so I don't know if that's the same provision but
10 it reads something to the effect and extent that any
11 cryptocurrency is deemed to be a security of the SEC or any
12 governmental unit.

13 And then it goes on to talk about good faith and
14 no liability for any -- various acts, including distribution
15 of cryptocurrency. That in addition to the Aegean language
16 that Your Honor talked about, so I just wanted to make sure
17 that that would be something that wouldn't be, you know,
18 included and applied in the order, it's over and above
19 (indiscernible) of the Aegean standard.

20 MR. BARNEA: Your Honor, this is J.D. Barnea again
21 from the U.S. Attorney's Office. I just wanted to read to
22 the Court the specifics, most problematic language that's in
23 paragraph 142 and 143 of the proposed -- the latest version
24 of the proposed confirmation order, which in our view, goes
25 well beyond even what this Court allowed in Aegean, and is

1 totally improper in many respects.

2 It says, provided further that the United States,
3 the state, and their agencies may not and will not allege
4 that the restructuring transactions are a violation of any
5 rules or regulations enforced by the United States, the
6 state, or any of their agencies, nor will they bring a claim
7 against any person, extremely broadly defined, on account of
8 their -- on account of or relating to the restructuring
9 transactions.

10 This language, if approved in the final order,
11 could potentially make it so that if someone incurs a tax
12 liability in the restructuring transaction, the IRS cannot
13 assess that tax. If someone commits a crime in implementing
14 the restructuring transaction, they can't be prosecuted for
15 it.

16 If they commit a fraud, they can't be prosecuted
17 or civilly charged with that. If they violated the
18 securities rules, or if they violate an environmental rule,
19 or any other possible governmental action that relates in
20 any way to the restructuring transactions of which no one
21 even knows what those things might be, this language would
22 enjoin and tie the hands of the United States and the states
23 and all of their agencies from ever claiming so, simply
24 because, you know, they relate in some way to transactions
25 contemplated by a plan of reorganization, not -- that goes

1 well beyond Aegean even to the extent that Aegean is the
2 appropriate standard here --

3 THE COURT: I'm not going to do -- I'm not going
4 to do anything of that scope. On the other hand, as I said
5 earlier, whatever I approve and confirm, there are
6 individuals who will have a statutory obligation to do it.
7 The regulators have had the chance, but have declined the
8 chance to suggest or to show me that any of these
9 transactions are illegal or should not go forward. It just
10 suggested that there might be issues, but have not taken an
11 official position.

12 To me you ought to be and will be estopped through
13 the exculpation provision from contending that the
14 individuals who carry out their statutory obligations to
15 implement the deal that I approve are personally liable in
16 any way for doing so. That doesn't mean that you can't go
17 after them if they violate tax laws. It doesn't mean you
18 can't go after them if they act unfaithfully, et cetera.

19 It does mean to be a hundred percent clear that I
20 am not going to sit here and say that you can say nothing to
21 me, deliberately remain silent as to whether this is a
22 problem and actually is a problem in your view, only to come
23 back after I direct debtors, for example, to distribute VGX
24 and say that the people who did so violated the securities
25 laws and may be criminally or civilly punished individually

1 for having done so.

2 That to me is something I will not tolerate and
3 will not allow. You've had your chance if that's what you
4 think to make that argument. And I won't subject
5 individuals under the compulsion of my own order, my own
6 confirmation order to do things that will subject them to
7 potential liabilities. It's just not appropriate in the
8 slightest. Okay?

9 MR. BARNEA: So it's the Court's position and we
10 respectfully request the opportunity to submit a brief
11 setting forth our argument in more detail before the Court
12 enters any confirmation.

13 THE COURT: Go ahead, but hurry up.

14 MR. GOLDBERG: Your Honor, I just wanted to
15 clarify for the record. We refer individuals, we don't mean
16 just (indiscernible) persons but also legal entities in
17 their roles (indiscernible).

18 THE COURT: Correct. And I'm just saying, you
19 know, I'm not saying that they can't be stopped, that people
20 can't preserve their injunctive rights. That's fine. But,
21 you know, to kind of purposefully stay on the sidelines and
22 take no position on the issue and then come in and say that
23 what people are under court order to do, they're now
24 personally or they're not subject to penalties for, that's
25 just doesn't make any sense to me, not in the slightest.

1 MR. UPTEGROVE: Your Honor, William Uptegrove for
2 the SEC. Just to go back to our point, we understand your
3 position. We just for the purpose of clarity to make sure
4 that the final order reflects what I think you've said,
5 paragraph -- again paragraphs -- the U.S. Attorney's Office
6 just talked about two of the three paragraphs that are cited
7 in our objections, so 142 and 143 are the paragraphs the
8 U.S. Attorney's Office mentioned and those are two of the
9 three in our objection.

10 The third one is SEC specific injunction. And so
11 I think those were the problematic language Your Honor
12 talked about this morning, that you weren't going to be --
13 you weren't going to enter. So we just wanted to confirm so
14 that when we talk to the debtors afterwards, we're all on
15 the same page about what the language is and isn't.

16 I think that language should be stricken. I think
17 that's what Your Honor said earlier. I just wanted to make
18 sure that we're all talking about the same thing, one. And
19 then two, there is some sort of I would think similar
20 language in the plan I mentioned about good faith and things
21 of that that go above and beyond Aegean, and just want to
22 make sure that things like that, you know, finding no
23 liability per se isn't what Your Honor has in mind.

24 THE COURT: I guess --

25 MS. RYAN: Your Honor, this is Ms. Ryan --

1 THE COURT: -- until we see the final language we
2 don't know, but I think -- I hope the concept is clear.
3 Let's just see if we can get the wordsmithing down.

4 MR. JONES: Your Honor, Seth Jones, pro se.

5 THE COURT: Yeah.

6 MR. JONES: A quick question. The SEC has taken a
7 stance that (indiscernible) XRP is a security, that's
8 currently in the middle of a trial. Is that not violating
9 security laws (indiscernible) XRP on the (indiscernible)
10 platform?

11 THE COURT: Well, there's no ruling at trial,
12 right?

13 MR. JONES: Okay. But you keep talking about
14 taking a stance on (indiscernible), they took a stance on
15 XLT (ph), right, I just want to clarify that.

16 THE COURT: I don't think the SEC has even
17 suggested that what Voyager's going to be doing with XRP is
18 a violation of the securities laws, although that's just
19 something they haven't revealed. They haven't said that.

20 MR. JONES: All right. Thank you, sir.

21 MS. RYAN: Your Honor, this is Ms. Ryan from the
22 State of Texas. If I may be heard regarding the releases?

23 THE COURT: Sure.

24 MS. RYAN: Thank you, Your Honor. The State has
25 objected and agrees on the same grounds that you've heard.

1 Additionally, paragraph 143 of the proposed order I think
2 the newest version is Docket 1140. It contains language
3 that references back to paragraph 97 and 99 of the proposed
4 order. And those paragraphs are very broad releases for the
5 purchaser. And again, we find that broad release
6 objectionable. Once the purchaser purchases the property,
7 they're going to have to comply with law, just as, you know,
8 any purchaser, buyer or even debtor in possession would have
9 to. And so we also object to that addition, in addition to
10 what you've already heard.

11 THE COURT: Which paragraphs in particular of
12 which?

13 MS. RYAN: In particular, it's 97 and 99, Your
14 Honor. And 99 particularly the breath of it is concerning
15 to me.

16 THE COURT: Which version --

17 MS. RYAN: 97 --

18 THE COURT: Which version of the confirmation
19 order to make sure I look at the right paragraphs?

20 MS. RYAN: At Docket 1140, Your Honor.

21 THE COURT: 1140?

22 MS. RYAN: Yes, sir.

23 THE COURT: Okay. I don't have that right in
24 front of me, but we'll -- I think the best thing to do on
25 all of these provisions is to see what language we come up

1 with and then see if there are further objections. Okay?

2 MS. RYAN: Yes, Your Honor.

3 MS. OKIKE: Your Honor, I will just say we have
4 been negotiating back and forth with the various
5 governmental entities on these various provisions. And the
6 proviso which appears in all of the paragraphs was what we
7 added to try to get at what Your Honor said in terms of the
8 exculpated parties not being personally liable, in terms of
9 taking actions that Your Honor approves or may approve under
10 the plan.

11 I totally understand we probably could have done
12 that a little bit better, but that is what we're trying to
13 get at. The second thing we're trying to get at is that we
14 don't believe any language in here should somehow preclude
15 the governmental agencies from having complied with the bar
16 date order.

17 So, for instance, the SEC did not file a claim
18 against the debtors. And we don't think that there should
19 be anything in this order that somehow insinuates that
20 they're now entitled to file (indiscernible) proof of claim.

21 THE COURT: I haven't heard anything being said
22 that would entitle them to do that, but.

23 MS. OKIKE: But we have a specific proviso here,
24 Your Honor, that they're objecting to that says nothing in
25 this confirmation order or the plan shall modify in any

1 respect the relief previously granted in the bar date order.
2 And they're explicitly objecting to that proviso and they
3 did not file a proof of claim.

4 THE COURT: I think --

5 MR. UPTEGROVE: Your Honor --

6 THE COURT: I thought they were objecting to -- I
7 thought the objection was a different proviso. What's the
8 objection to that one?

9 MR. UPTEGROVE: Your Honor, William Uptegrove on
10 behalf of the United States Securities & Exchange
11 Commission. There's room on filing a proof of claim and
12 untimely proofs of claims. I don't think there needs to be
13 a provision in the confirmation order specifically singling
14 out, you know, the government bar date and our proving
15 claim, one.

16 And two, there's additional language in here that,
17 let me just find it. So it says -- so I think this is -- I
18 think it's the second to last or maybe to last version of
19 the confirmation order, paragraph 142 in our objection.
20 It's quoted, provided however that nothing in this
21 confirmation order or the plan shall modify in any respects
22 the relief previously granted in the bar date order, just to
23 point out that parenthetically that don't need another order
24 to say what's already in a prior order.

25 But, no person or entity including the United

1 States, the state, or any other agencies can seek or receive
2 a direct or indirect distribution of any property of the
3 debtor's estate unless they filed a proof of claim prior to
4 the government bar date.

5 Again, there's already rules in the Code and the
6 bankruptcy rules for this. And a big problem with it is the
7 language, the indirect language. Your Honor, I have
8 absolutely no idea what that means. And it could mean all
9 types of things in hindsight, and it's just an unmuted
10 provision that potentially does enjoin something that we
11 otherwise could do by saying we can't indirectly
12 (indiscernible) that language, indirect, you know, seek
13 (indiscernible) a direct or indirect distribution of
14 property of the debtor's estate. It's -- in our view, it's
15 not a needed provision. It has ambiguous language that
16 could be read at some point could somehow impair our police
17 and regulatory powers and we think that's improper.

18 MS. OKIKE: Your Honor, the reason we have the
19 proviso is because the provision that they requested that we
20 add, says nothing in this confirmation order or the plan
21 shall (indiscernible) release by the United States of any
22 claim arising under, and all these different things, or
23 enjoin them from bringing a claim against the released
24 parties, which includes the debtors.

25 And so we think you need a proviso in light of the

1 fact that we have a bar date order and the SEC did not file
2 a proof of claim.

3 THE COURT: All right. I will --

4 MR. UPTEGROVE: Your Honor, it's a liquidating
5 debtor, it doesn't get a discharge.

6 THE COURT: I will --

7 MS. OKIKE: It's not a discharge.

8 THE COURT: I will look at the proviso and modify
9 it appropriately. If I can't do so, I shouldn't have this
10 job, but we don't need any further argument about that.

11 MR. GOLDBERG: Your Honor, Adam Goldberg on Latham
12 & Watkins on behalf of Finance U.S. Just very quickly to
13 the frame issue raised by the State of Texas on paragraphs
14 97 and 99.

15 From our perspective, that language is intended to
16 implement the free and clear nature of the asset sales and
17 to protect the purchaser and the acquired assets from claims
18 and interests that could be brought against those assets and
19 the debtor's -- in the hands of the debtor's estate.

20 THE COURT: Right.

21 MR. GOLDBERG: Thank you, Your Honor.

22 THE COURT: That just means you're not liable,
23 taking on liability for liabilities of the debtor.

24 MR. GOLDBERG: Correct.

25 THE COURT: It doesn't mean that you're freed from

1 any of your own liabilities.

2 MR. GOLDBERG: That's exactly right, Your Honor.

3 THE COURT: Yeah.

4 MR. GOLDBERG: And we (indiscernible) to protect
5 the purchaser of liability is protect against action against
6 the acquired assets. Thank you.

7 THE COURT: Okay.

8 MS. RYAN: Your Honor, this is Ms. Ryan. I think
9 that's the spirit of those two paragraphs. I do think that
10 they're overly broad, but I'm happy to work with counsel to
11 find wording that we can all live with.

12 THE COURT: Okay.

13 MR. MORRISSEY: Your Honor, Richard Morrissey for
14 the U.S. Trustee, shall I continue?

15 THE COURT: Go ahead.

16 MR. MORRISSEY: Okay. Your Honor, the next issue
17 on the subject of exculpation covers certain definitive
18 documents. That is a defined term. It's paragraph 60 of
19 the plan. We have no objection, Your Honor, to the
20 inclusion of certain of these documents listed, in the
21 context of exculpation such as the disclosure statement and
22 the plan and confirmation order, for example.

23 But we did raise objections to the inclusion of
24 certain other documents. And, Your Honor, the debtors have
25 agreed to take out a couple of those exceptions from the

1 exculpation provision.

2 THE COURT: Right.

3 MR. MORRISSEY: One is listed in the declaration
4 as subsection G as in George. The management transition
5 plan which is something that's going to be happening later
6 on. And also subsection H which is any new material
7 employment consulting or similar agreements entered to
8 between the (indiscernible) any of the debtor's employees if
9 any.

10 So those we agreed to. There's one thing that we
11 didn't quite come up with an agreement on, but I believe we
12 can agree right here and now, as a matter of fact counsel
13 and I discussed this before Your Honor took the bench this
14 morning.

15 Subsection K of that definition has a catch all to
16 basically account for anything that is missed in the prior
17 subparagraphs. And it covers all kinds of documents, deeds,
18 agreements by filing notification to pleadings,
19 certificates, orders, letters, instruments and the list goes
20 on and on.

21 Your Honor, the catch all provision we believe
22 should be expressly limited post petition, pre-effective
23 date, that time period. And the U.S. Trustee would also go
24 along with this language provided that all of the definitive
25 documents in the catch all paragraph are within the Court's

1 purview.

2 In other words, we don't object to the language so
3 long as the Court will (indiscernible) those documents. Now
4 then counsel can tell me if I have that correct.

5 MS. OKIKE: Yes, I think subject to the agreement
6 on language.

7 THE COURT: Okay.

8 MR. MORRISSEY: Okay. Your Honor, while I'm here,
9 I resolved a couple of other issues unrelated to
10 exculpation. I can certainly let the Court know later or
11 now, it's not that long, it's up to the Court.

12 THE COURT: Let's get the good news now.

13 MR. MORRISSEY: Okay. And, Your Honor, I should
14 say also that the parties have been very cooperative
15 throughout this process in striving to reach certain
16 understanding.

17 The amended disclosure statement, Your Honor, does
18 disclose both the management transition plan and an employee
19 transition plan, but it --

20 THE COURT: You resolved it by saying I'm not
21 specifically approving them, yes.

22 MR. MORRISSEY: Correct.

23 THE COURT: Okay.

24 MR. MORRISSEY: Thank you, Your Honor. The debtor
25 has agreed to that.

1 The amended plan provided that all proofs of claim
2 were to be considered objective and disputed without further
3 action --

4 THE COURT: Right, that's changed. I saw that
5 change. I saw the change to delete the requirement that
6 only -- the provision that said that only the plan
7 administrator could object.

8 MR. MORRISSEY: Correct.

9 THE COURT: And I saw that they addressed your
10 concern about how late claims would be treated and made
11 clear that they're not automatically gone. They're gone
12 subject to my approval that they're gone.

13 MR. MORRISSEY: Yes, and Your Honor has officially
14 stolen my thunder. And therefore, I have nothing further.
15 Thank you, Your Honor.

16 THE COURT: Okay. All right.

17 MR. KIRPALANI: Your Honor, if I may?

18 THE COURT: Yeah.

19 MR. KIRPALANI: Susheel Kirpalani from Quinn
20 Emmanuel. I just wanted to come back to you on the issue of
21 the releases, the insiders, the justification for why
22 insiders who aren't actually paying anything should be
23 getting a release. And the individuals as we mentioned and
24 as Mr. Pohl testified with whom the buck stopped were the
25 CEO and COO, Mr. Ehrlich and Mr. Psaropoulos. In all of the

1 negotiations with them, it was always the understanding that
2 this is a package D&O settlement for the insiders and it's
3 for a reason.

4 Every one of those subordinate officers would
5 otherwise be pointing the finger and potential cross claim
6 against those two, because those are the individuals with
7 whom the buck stops.

8 And so I think it is -- it's not going to be a
9 faithful implementation of the settlement, the so-called D&O
10 settlement if individuals who could then claim --

11 THE COURT: That explains why you want to release
12 them of liability as to the 3AC problem.

13 MR. KIRPALANI: Well, if I may, Your Honor, on
14 that point I anticipated you asking me that. In paragraph
15 10 of Mr. Pohl's declaration it's clear what the
16 investigation entailed. It's more than just the loans of
17 3AC. It was Voyage -- all of Voyager's loans to third
18 parties, the diligence performed in connection with all of
19 those loans, the formation and function of the risk
20 committee, Voyager's staking of customer cryptocurrency
21 assets, Voyager's regulatory compliance, Voyager's
22 communications with the public, Voyager's prepetition
23 payments to insiders and certain third parties, and other
24 aspects that's referring to the insurance company, Your
25 Honor, and other aspects of Voyager LLC's business.

1 While I understand we didn't take on a wholesale
2 investigation of what payments might have been paid to
3 employees generally. I will come to that in a moment.
4 Certainly with respect to the insiders, I think if the
5 releases could have least tracked the language of the
6 testimony that we had of what was investigated, I think that
7 would be acceptable.

8 THE COURT: Read that language to me again,
9 please.

10 MR. KIRPALANI: Yes, Your Honor. Voyager's loans
11 to third parties, with a particular focus on the couple of
12 loans to 3AC, the diligence performed in connection with
13 those loans, the formation and function of Voyager LLC's
14 risk committee, Voyager LLC's staking of customer
15 cryptocurrency assets, Voyager LLC's regulatory compliance,
16 Voyager LLC's communications with the public, Voyager LLC's
17 prepetition payments to insiders and certain third parties
18 and other aspects of Voyager LLC's business, the last one,
19 you know, I think is probably too vague to be meaningful.

20 The specific individuals were also listed in
21 paragraph 13 of Mr. Pohl's declaration. I did miss a couple
22 when I was trying to do it from memory.

23 And with respect to the employees broadly, Your
24 Honor, although it wasn't the focus of the special committee
25 or of Mr. Pohl's work and his testimony, it was the focus of

1 Mr. Renzi's testimony in paragraphs 114 and 115 of his
2 declaration, which is at Docket 1119. Mr. Slade pointed
3 that out to me.

4 THE COURT: His declaration was admitted only to
5 the extent that it dealt with uncontroverted aspects of the
6 Bankruptcy Code.

7 MR. SLADE: That's correct, Your Honor. He did
8 testify on those particular points, I think that's what you
9 directed us to do on -- and I think what Mr. Kirpalani
10 (indiscernible) it.

11 MR. KIRPALANI: In his testimony, Your Honor, he
12 did specify that the debtor's releases of potential debtor
13 claims for the individuals who searched faithfully during
14 the post petition process, including all of the employees
15 which are defined as the Voyager released employees, that
16 those releases were critical to keeping the band together,
17 to ensuring maximum value for the estate and the customers,
18 this has not been (indiscernible) of these people. And
19 there is record evidence on that. And so we would continue
20 to urge the releases of those employees.

21 THE COURT: I'll go back to my notes and look for
22 that.

23 MR. KIRPALANI: Thank you.

24 MR. SLADE: Your Honor, I would add that Mr.
25 Renzi's testimony on that point was in the context of the

1 feasibility of the plan, that these folks are necessary in
2 either direction, whether we sell (indiscernible) and
3 frankly particularly if we do the (indiscernible)
4 liquidation. The feasibility of that is tied to the --
5 these individuals continuing to perform their services.

6 THE COURT: Okay. What else do we have, Ms.
7 Okike?

8 MS. OKIKE: Your Honor, there were some objections
9 that we are impermissibly seeking a discharge, who obviously
10 are not entitled a discharge, and we included a provision in
11 the confirmation order to that effect.

12 I believe we need to consult with counsel Debias
13 (ph) on the customer data, so that we can come back on that
14 point.

15 Your Honor, we also had an objection, I believe,
16 with respect to dollarization. This was by Mr. Schupato
17 (ph) who argued that customers were entitled to the return
18 of cryptocurrency on the debtor's platform and that their
19 claim should not be (indiscernible) as of the petition date.

20 We continue to take the position that
21 cryptocurrency on the platform is property of the estate and
22 dollarization is required under Section 502(b) of the
23 Bankruptcy Code.

24 Your Honor, with respect to the liquidation
25 analysis, I think Mr. Renzi's testimony made clear that

1 under either the sale transaction or the liquidation
2 transaction, creditors will receive at least as equal if not
3 greater recoveries. We believe that he testified that the
4 impact of a forced liquidation would result in materially
5 lower recovery values for cryptocurrency in a Chapter 7. We
6 believe we've satisfied the best interest tests. And there
7 was a handful of objections on that which we're happy to
8 address.

9 THE COURT: I don't think I need any further
10 argument on that, I understand the evidence. You know --

11 MS. OKIKE: Oh, sorry.

12 THE COURT: -- one thing that troubles me, you're
13 supposed to identify the people who will serve as directors.

14 MS. OKIKE: Oh, correct, Your Honor, I --

15 THE COURT: The original plan said that well,
16 you're just going to have a trustee, you're not going to
17 have directors so you don't have to do it. But you've
18 modified your plan now to say that there will be independent
19 directors who will be pursuing the intercompany issues.
20 Don't you have to say who they are? Doesn't the Code
21 require that?

22 MS. OKIKE: Yes, Your Honor, we agree that we do
23 need to disclose who those parties are. We would like to be
24 able to work with the plan administrator with respect to
25 that.

1 Ideally I think in the debtor's view it would be
2 the independent directors that are currently serving, but I
3 think there was a desire to have a conversation with the
4 plan administrator, as to who would continue to serve in
5 those roles.

6 We do agree that we need an independent director
7 at all three entities, given the complex within the entities
8 with respect to intercompany claims. And we would identify
9 those persons, you know, prior to the plan going effective.
10 I guess we could provide an opportunity for --

11 THE COURT: See that's the problem I think people
12 may not have been paying attention to, but 1129(a)(5)(A)(i)
13 says you have to disclosed it as a condition to
14 confirmation.

15 MS. OKIKE: Understood, Your Honor.

16 THE COURT: I didn't write that, but I'm required
17 to abide by it, so I think you have to come up with the
18 names.

19 MS. OKIKE: Your Honor, if we could confer with
20 the committee during the break on that. We understand that
21 we do need to disclose the identities and we'd just like to
22 have a conversation with them.

23 THE COURT: Okay. Two relatively minor points
24 that I noticed. There may be others in the proposed order,
25 but in the plan and disclosure statement, you say that

1 professional fees will be subject to review through the
2 confirmation date, it's kind of a specific distinction
3 between the confirmation date and the effective date in that
4 regard. I think I'm required to approve the reasonableness
5 of all fees through the effective date of the plan. So you
6 need to change that.

7 MS. OKIKE: Understood, Your Honor.

8 THE COURT: There are provisions in the plan
9 administrator agreement and in the plan that effectively say
10 that if you get a letter or a communication or a
11 distribution that's returned to some undeliverable that you
12 don't have to do anything to try to find that customer.
13 Almost every plan I see has that provision, and so far as I
14 know I've never approved it. So --

15 MS. OKIKE: Okay.

16 THE COURT: -- I'm sure you can see whatever
17 language in prior cases you've had with me, that I require
18 you make reasonable efforts to find people. I don't think
19 it's right --

20 MS. OKIKE: Yes, Your Honor.

21 THE COURT: -- just because one letter is returned
22 that they forfeit their distributions.

23 And then look at the various insurance provisions
24 of your proposed order, because the -- a number of them,
25 there are five or six of them that essentially require the

1 debtors to honor, keep in place, not change any of their
2 insurance policies. I don't understand how that's
3 consistent with potentially going after this \$10 million
4 insurance policy that was bought shortly before the filing
5 of the case. It seems like it would directly order you not
6 to do so and to keep that policy in place. You need to look
7 at that language.

8 MS. OKIKE: Will do.

9 THE COURT: It's probably just form language you
10 took from something else, but it doesn't match what you're
11 trying to do in this case.

12 MS. OKIKE: Understood, thank you, Your Honor.

13 THE COURT: Is there any argument as to the
14 confirmation of the plan of reorganization?

15 MS. MOYNIHAN: Your Honor?

16 THE COURT: Yes, who is that?

17 MS. MOYNIHAN: Kelly Moynihan, Kilpatrick Townsend
18 & Stockton, counsel for the ad hoc group of equity interest
19 holders of Voyager Digital Limited.

20 We did want to be heard briefly related to an
21 issue that you just addressed about the post effective
22 dates, independent directors and the plan administrator. I
23 can do them now or whenever else you would prefer.

24 THE COURT: Well, there's no time like the
25 present.

1 MS. MOYNIHAN: Thank you, Your Honor. As Mr.
2 Posner from my firm noted on Friday while we've resolved our
3 filed objections to the plan, subsequent to those
4 resolutions, there have been certain developments that are
5 concerning to our client on -- as I'll explain it, I think
6 the confirmed can be equally resolved.

7 As the Court is aware Voyager Digital Limited,
8 commonly referred to TopCo and (indiscernible) a publicly
9 traded on the Toronto stock exchange, the ad hoc group is
10 comprised of shareholders who are parties to a class action
11 of defrauded equity holders and common stock holders.

12 Our clients have asserted that there are
13 approximately \$230 million of intercompany claims due from
14 OpCo and SoldCo to TopCo that are dollars in allowable
15 claims, which should result in a distribution to TopCo
16 equity interest holders.

17 Late last year, we commenced an adversary
18 proceeding for declaration of the intercompany claims are
19 valid and allowable, based upon among other things, the
20 debtor's own statements and schedules, which listed those
21 intercompany claims as allowable and did not mark them as
22 disputed, unliquidated or contingent.

23 On the eve of this confirmation hearing that
24 changed a little bit, which I will explain. As the Court's
25 aware the debtors have asserted in the various iterations of

1 the disclosure statement that the intercompany claims should
2 be subordinated, and then ultimately substantially all of
3 the intercompany claims should be recharacterized.

4 After engaging in expensive dialogue with debtor's
5 counsel, as well as document discovery, approximately two or
6 so months ago the debtor's counsel advised that they had
7 determined that the debtors couldn't resolve the
8 intercompany claims, but rather than independent directors
9 of each of the debtors would investigate and analyze the
10 intercompany claims and engaged in negotiation to resolve
11 those claims and determine to what extent, if any, they
12 should be recharacterized.

13 Over the last six weeks the ad hoc group has had
14 several meetings with TopCo's independent director counsel
15 Katten Muchin. The ad hoc group believes that the Katten
16 independent director Mr. Ray has been thoughtfully,
17 carefully and robustly advocating on behalf of creditors and
18 interest holders at TopCo with respect to the intercompany
19 claims issue.

20 Despite what the debtors and other parties had
21 hoped, the issues surrounding the intercompany claims have
22 not been resolved prior to this hearing. And as a result,
23 all of the parties' rights including the ad hoc groups have
24 been preserved under the plan and the intercompany issues
25 we've resolved post confirmation part of the winddown debtor

1 activities.

2 We understand as of this hearing that TopCo and
3 OpCo are still engaged in the dialogue over the intercompany
4 claims and that no resolution has been reached yet.

5 There's been some very recent developments in the
6 case, we believe that there should be a separate plan
7 administrator appointed for TopCo. For example, the FTX
8 stipulation which I'll discuss in a minute was filed just
9 now before confirmation objections were due. The government
10 security stipulation was filed on February 27th. The
11 debtors filed the amended plan, which included a number of
12 changes, including that the current independent director
13 would be discharged upon the effective date, or we one wind
14 down debtor with one plan administrator appointed by the
15 committee for all of the debtor entities.

16 The oversight committee will be comprised solely
17 of members from the creditor's committee and the plan
18 administrator will direct new independent directors of each
19 debtor entity.

20 Last Wednesday HoldCo amended its schedule to
21 reflect the intercompany claims are now disputed, contingent
22 and unliquidated. And last Wednesday evening finance
23 circulated an e-mail to customers that stated among other
24 things, that their recoveries assumed -- intercompany claims
25 would be recharacterized and that the (indiscernible) claims

1 would be subordinated to customer claims.

2 Having the committee appoint the plan
3 administrator and have the oversight committee be made up of
4 solely creditor committee members means that there's real no
5 advocate for the interest of creditors and interest holders
6 at TopCo post (indiscernible) date, allowing members of the
7 committee to appoint the new confirmation independent --
8 post confirmation independent director at TopCo should be
9 problematic.

10 The committee's goals in this case has been clear
11 and obvious, that's to maximize values to the claims of the
12 customers at OpCo which comes with a cost to TopCo as
13 interest holders. This has been evidenced in a number of
14 ways.

15 First, the debtor's stipulation with Alameda and
16 the committee we think is very telling. The stipulation
17 allows -- provides that FTX will waive its \$75 million claim
18 against the debtors or assign its claims to OpCo at the
19 debtor's option.

20 The ad hoc group certainly questions
21 (indiscernible) object to assigning the loan claims to OpCo
22 (indiscernible) have tried to assert the guarantee claims
23 for the 75 million against TopCo.

24 Further, in the event that the particular tactic
25 doesn't work and there is value for TopCo's equity interest

1 holders, the stipulation further allows FTX to assign any
2 recoveries received from its TopCo equity interest to OpCo
3 at the debtor's option.

4 Second, as I previously noted, the \$230 million in
5 intercompany claims have not been resolved yet. While there
6 are current independent directors appointed at each debtor
7 that are attempting to negotiate a resolution of those
8 claims --

9 THE COURT: Can I interrupt?

10 MS. MOYNIHAN: -- upon the effective date --

11 THE COURT: Can I interrupt you?

12 MS. MOYNIHAN: Sure.

13 THE COURT: Can I interrupt you?

14 MS. MOYNIHAN: Uh-huh, yes.

15 THE COURT: You're not telling me anything new,
16 with very few exceptions, you're not telling me anything I
17 didn't already know. But I thought your issues had been
18 resolved. I'm --

19 MS. MOYNIHAN: I'm --

20 THE COURT: -- very unclear as to what has
21 happened to unresolve them.

22 MS. MOYNIHAN: I think the changes to the plan in
23 the last week were concerning. Our concern is that there
24 isn't going to be an independent party who zealously
25 advocated for what's best at TopCo.

1 We understand as Mr. Hague (ph) testified that if
2 there is a conflict that arises, whether we will, or
3 position conflict a member of the oversight committee will
4 presume the plan administrator's duties with respect to that
5 conflict. Our position is that the plan administrator is
6 being appointed by the creditor's committee. The oversight
7 committee is being appointed by the creditor's committee.
8 The creditor's committee has made its goals in this case
9 pretty apparent and our concern is that there won't be some
10 independent director appointed by TopCo that really truly
11 represents TopCo's interest. It's being chosen by the plan
12 administrator or essentially the creditor's committee.

13 We would like a truly independent person to be
14 appointed to represent TopCo post effective date, who can
15 hire their own counsel. The ad hoc group is certainly
16 willing to select an independent plan administrator to act
17 for TopCo and would be willing to consult with that plan
18 administrator.

19 Alternatively, Your Honor, given how diligently
20 and deliberately and apparently aggressively Mr. Ray has
21 been in discharging his duties as independent director of
22 TopCo, the ad hoc group would be satisfied with Mr. Ray
23 continuing in that position post-effective date and
24 continuing to retain his counsel Katten on his behalf. And
25 we would like for him to be granted with authority to handle

1 the matters that are issue here, including intercompany
2 claims, the Alameda guarantee claim and the government
3 claims asserted against TopCo.

4 THE COURT: What were the matters you wanted --
5 the intercompany claims and what other matters?

6 MS. MOYNIHAN: The Alameda guarantee --

7 THE COURT: Alameda.

8 MS. MOYNIHAN: -- claim. We ask in the event
9 under the FTX Alameda stipulation that OpCo retains those
10 claims to (indiscernible) against TopCo, as well as the
11 government claims that have been filed against TopCo.

12 The ad hoc group did not believe those are valid
13 claims against TopCo and does intend to object to those
14 claims. So we would like to have authority to address those
15 as well on behalf of TopCo because -- they're certainly at
16 issue between our clients and any recovery.

17 MR. ASMAN: Your Honor, Darren Asman from
18 (indiscernible) for the committee.

19 Your Honor asked what has changed since the
20 objection deadline of the plan, and there's nothing that has
21 changed. In fact, the only thing that's changed is that
22 protections have been added in response to some of the
23 concerns raised by equity.

24 This is the first time this -- even outside of
25 this court that we're hearing of a request for a separate

1 plan administrator. So I would object to this objection
2 just as untimely, but more substantively just to address the
3 concerns that were raised by Mr. Bosner and the ad hoc
4 equity group. We agree that until the intercompany claims
5 are resolved, there will be an independent director in
6 place. That's an independent director who will hold
7 fiduciary duties to that entity. That is exactly the
8 current system that's in place right now at the company and
9 it's a system that we are carrying forward through post
10 confirmation.

11 I think the odd part about this request --

12 THE COURT: Will it be the same director or no?

13 MR. ASMAN: Well, that's a subject for discussion
14 that we want to talk about outside. It's not something
15 we've thought about, to be quite frank. We've been focused
16 on confirmation. The plan administrator agreement gives the
17 plan administrator the authority to put independent
18 directors in. Somebody has to have the authority to remove
19 them, they just can't be in there in perpetuity and that
20 again is the system that's in place right now. The
21 independent directors could be removed today.

22 THE COURT: Why is the authority limited to the
23 intercompany issues, as opposed to more generally issues
24 where there are conflicts between the debtors? For example,
25 that provision in the Alameda loan clearly there's a

1 conflict between the different debtors.

2 MR. ASMAN: Your Honor, again, this is the first
3 we're hearing this from the ad hoc group. I don't have a
4 good answer on the spot right now, it was just raised a few
5 minutes ago and it's something we can certainly consider.

6 THE COURT: Yeah, but surely it had to be obvious
7 to you that that's a matter -- that's a provision about
8 which the different entities would have to produce.

9 MR. ASMAN: Maybe. I think it depends on --

10 THE COURT: Maybe? I think there have been prior
11 objections to your suggestion that it would work that way if
12 I remember right. You were suggesting something similar to
13 that at the time of the FTX deal and you got an explicit
14 objection.

15 MR. ASMAN: Correct. But I think if the
16 intercompany claim is resolved in a way such that there's
17 nothing (indiscernible) up to TopCo it's resolved. I guess
18 what you're suggesting Your Honor is if at least until that
19 is resolved, or if it is resolved in a way where
20 (indiscernible). I hear your point, I'm not saying it's not
21 an issue. I'm just saying we haven't considered it.

22 But one thing I want to make really clear, the odd
23 part about this request is it's not really equity that
24 should even have a say in this. It's creditors at TopCo.
25 Equity here has a nearly insurmountable obstacle to getting

1 a recovery in this case and it's for good reason, because
2 they're equity.

3 The first, Your Honor, they have to somehow
4 convince this Court and more than \$200 million of capital
5 contributions from one affiliate to another are somehow not
6 equity, that's step one. Second --

7 THE COURT: They were a focused debt, weren't
8 they?

9 MR. ASMAN: Correct, Your Honor.

10 THE COURT: Okay.

11 MR. ASMAN: I will not stray too far afield from
12 why that's not the debt, but understood. Second, they have
13 to knock out the \$75 million Alameda claim that comes ahead
14 of equity. Third, they have to knock out more than \$40
15 million of claims by governmental entities against TopCo.
16 And then fourth, and probably most importantly, even after
17 all of that, there's around \$10 million of general unsecured
18 claims at TopCo, non-government claims, not Alameda claims,
19 just unsecured claims. And there's 2 and a half million
20 dollars at HoldCo.

21 I don't see why it would be -- there's been no
22 demonstration yet that there's going to be sufficient flow
23 of cash that's going to satisfy any of those claims at all,
24 let alone in full.

25 THE COURT: Well, whether we're doing this for

1 equity or creditors there obviously has to be an independent
2 party at TopCo to handle issues as to which TopCo's
3 interests differ from the interests of other debtors.

4 MR. ASMAN: I agree with that, Your Honor. That's
5 the role of the independent director.

6 THE COURT: So let's make sure it isn't so
7 explicitly cabined to the intercompany issues and it's more
8 broad as to issues where there's a conflict.

9 MR. ASMAN: Understood.

10 THE COURT: And then let's disclose who it is and
11 hopefully that'll make everybody happy and we won't have a
12 further issue.

13 MR. ASMAN: Thank you, Your Honor.

14 THE COURT: Okay. Any other objections or
15 arguments as to confirmation of the plan?

16 MR. UPTEGROVE: Your Honor, William Uptegrove for
17 the SEC. Just not an argument, but a further clarification
18 from this morning is the Section 1145 I believe is being
19 dropped from the plan if I heard it correctly on the phone.
20 So I just wanted to make sure we no longer needed to put in
21 our submission tomorrow.

22 THE COURT: I understand the debtor is not seeking
23 anything -- any specific findings one way or the other about
24 it, 1145; is that right?

25 MS. OKIKE: Correct.

1 THE COURT: That's correct.

2 MR. UPTEGROVE: Thank you, Your Honor.

3 MR. HENDERSHOTT: Your Honor, this is Tracy
4 Hendershott, pro se, creditor.

5 THE COURT: Yes, Mr. Hendershott.

6 MR. HENDERSHOTT: You're saying any other
7 objections? Does that include our request for a trustee for
8 creditor request to invoke our rights under Code 1112(a) and
9 (b) as well as Bankruptcy Code 1104(a)(1) for the findings
10 of or at least the evaluation of -- for the findings of
11 fraud, dishonesty, incompetence, gross management?

12 THE COURT: We can move to that unless there are
13 other points that people want to make on the confirmation
14 issue itself.

15 MS. OKIKE: Your Honor --

16 MR. HENDERSHOTT: Very good.

17 MS. OKIKE: -- the last point we just wanted to
18 note there were some objections to the plan administrator.
19 We believe he's (indiscernible) serving the role, he's an
20 experienced bankruptcy professional who's intimately
21 familiar with the debtors and their estates.

22 He testified that he doesn't believe that his
23 prior representation of the committees here would impede his
24 ability to serve as plan administrator and that he would
25 recuse himself in the benefit of any conflicts. And the

1 plan administrator agreement provides for the same. So we
2 believe he should be appointed.

3 THE COURT: Okay.

4 MR. HERNDERSHOTT: Your Honor, Tracy Hendershott
5 again. I offered to submit that change from yesterday, you
6 know, it's well intended and certainly does have credentials
7 in the space. Mr. Hague has not a single day of experience
8 as administrator. In addition Mr. Hague was providing
9 counsel to the UCC chairman, you know, approving these, you
10 know, very extensive, broad reaching, overreaching
11 discharges, you know, that you called out yourself, this
12 gives us great concern that we are going to have the maximum
13 potential of -- for recovery due to the winddown activity
14 afterwards.

15 You know, the creditors, Your Honor, are looking
16 for a mystery (indiscernible), you know, a shark that can
17 try to increase the 24 percent return that we're talking
18 about now closer, you know, as high as possible.

19 We need an individual that is experienced,
20 aggressive, and is, you know, knowing the (indiscernible) of
21 Mr. Ray that's assigned to the FTX case. We have seen none
22 of that behavior yet exhibited by Mr. Hague in his guidance
23 or (indiscernible) UCC and, you know, we stand with our
24 objections from yesterday. Thank you.

25 THE COURT: Anybody else want to be heard about

1 Mr. Hague's appointment?

2 MR. NEWSOM: Your Honor?

3 THE COURT: Go ahead.

4 MR. NEWSOM: Your Honor, this is Dan Newsom for
5 (indiscernible) as well. I will second Mr. Hendershott's
6 arguments and state that my position hasn't changed as well
7 and no offense to Mr. Hague, it seems like he has a lot of
8 experience in estates and (indiscernible) is even desirable.
9 However, I would note that the debtors spared no expense as
10 it relates to hiring their counsel and now we're being asked
11 to do I guess pinch our pennies when it comes to appointing
12 the plan administrator.

13 And, Your Honor, frankly, you know, while the
14 conflict of interests aren't as strong as, you know, we
15 might have led to believe or might have believed ourselves,
16 it is the matter of effectiveness. And in terms of the
17 ability of the Court to appoint an independent plan
18 administrator, creditors would receive maximum confidence
19 that their best interests are heart, versus what we've seen
20 so far in terms of effectiveness from the UCC and by
21 extension Mr. Hague.

22 THE COURT: Anybody else?

23 UNIDENTIFIED: Your Honor (indiscernible). Sorry.
24 Ladies first.

25 MS. DIRESTA: Go ahead, Seth.

1 UNIDENTIFIED: Your Honor, the plan administrator
2 is ultimately the most important role for creditors in this
3 bankruptcy. As you know, they can decide if they want to go
4 after someone or not. Why are we now penny pinching
5 (indiscernible) law firm from Detroit, Michigan only because
6 his clients was elected as a chairperson on the UCC when a
7 dozen other professional agencies that have been hired in
8 this case are all (indiscernible) recognized (indiscernible)
9 firms.

10 Creditors don't want (indiscernible) as Mr. Hague
11 said was his goal. We want to be made whole. We've
12 suffered enough. This is not the time for on the job
13 training. Creditors (indiscernible) the best recovery
14 possible. We deserve a (indiscernible) or a (indiscernible)
15 ticker type plan administrator that has zero connections of
16 Voyager, zero (indiscernible) interest and is only looking
17 to bring the hammer down. Thank you, Your Honor.

18 THE COURT: Okay. Mr. Asman?

19 MR. ASMAN: Your Honor --

20 MS. DIRESTA: Hi, Your Honor.

21 THE COURT: Oh, who was that?

22 MS. DIRESTA: Oh, this is Gina DiResta, Your
23 Honor. And I agree with my fellow creditors. We are
24 against having Mr. Hague be the plan administrator. The UCC
25 voted to have him be the plan administrator and we don't

1 agree with the UCC judgment, because what we found most of
2 the time in this entire case is I think the UCC has only
3 objected to like maybe two things, but otherwise, they have
4 pretty much just gone along to get along with the debtors.

5 And so we feel that we need an independent party,
6 so it's just not the credentials of Mr. Hague and not having
7 the experience and us wanting a more experience who's really
8 going to fight for us, but someone who has to know fresh
9 eyes, no conflict of interest, who can really come in and
10 fight for us. Like I said, the UCC we feel has not done a
11 good job in representing us and in fighting for us.

12 I mean, even if you just look at the list of
13 objections, the (indiscernible) objections with, you know,
14 the court documents has only been, you know -- that's it,
15 you know, like go along to get along.

16 So having someone independent, having someone with
17 proper credentials to really fight for us is what we need,
18 Your Honor. And you're really our last hope when it comes
19 to this, so I hope that you will help us in some way. Thank
20 you.

21 MR. ASMAN: Your Honor, again Darren Asman from
22 McDermott Wilhelm for the committee. Your Honor, Mr. Hague
23 is going to be tasked with an important role that we expect
24 is going to last through the years. Specifically he's going
25 to be responsible for pursuing a number of bad actors,

1 investigating potential claims, and ultimately I hope
2 recovering a lot more for creditors to bring them closer to
3 whole.

4 Mr. Hague, will also, of course, be responsible
5 for a number of administrative functions that are typical of
6 post confirmation trust tax returns affecting future
7 distributions and objecting to claims among others.

8 Your Honor, the committee was given discretion to
9 select a plan administrator in consultation with the
10 debtors. This is common in Chapter 11 cases, as you know,
11 particularly in a case like this, where the only real
12 constituents are unsecured creditors.

13 The committee took this process seriously at the
14 recommendation of professionals. They interviewed three
15 different candidates for the role, including Mr. Hague. The
16 committee voted for Mr. Hague to serve in this role, and
17 again, this is a committee of seven creditors of whom -- all
18 whom lost their personal assets on Voyager's platform and
19 there are seven creditors who the U.S. Trustee felt could
20 best adequately represent the entire creditor body at their
21 significant (indiscernible) a process that we were not a
22 part of, of course.

23 The plan and disclosure statement made clear to
24 creditors that the committee would be sluffing if its plan
25 administrator. And on February 15th, the debtors filed a

1 second plan supplement, it's Docket No. 1006 which
2 identifies Mr. Hague as the plan administrator.

3 Importantly as Your Honor's order required, this
4 identification was made one week prior to the voting
5 deadline which was on February 22nd. The purpose of this
6 disclosure, of course, was to ensure that creditors are
7 aware of not only the process for selecting a plan
8 administrator, but ultimately who that plan administrator
9 would be when casting a vote on the plan.

10 More than 60,000 creditors voted on the plan with
11 an aggregate dollar value of more than \$550 million. Your
12 Honor, one of the creditors asked the witness on Friday,
13 Thursday, I'm losing track of the days now, whether it was
14 unusual that only 60,000 creditors voted. I wasn't on the
15 stand at the time, but I thought about that question quite a
16 bit on the weekend, and my answer is that actually the
17 number is really high. 60,000 people took time to fill out
18 a ballot and then while it may not be a high percentage in
19 number, it's still a big number and it suggests a lot of
20 creditors are watching this case closely and fully
21 understand what's going on.

22 Your Honor already knows this, but just as a
23 reminder, the creditors who voted, 97 percent in number
24 accepted, 98 percent in dollar amount, for \$541,000 in
25 dollars, voted to accept the plan. And again, that is all

1 with the understanding that the committee would be selecting
2 a plan administrator and later that it would be Mr. Hague.

3 You have objections in front of you from a few
4 creditors to the selection of Mr. Hague as the plan
5 administrator. The aggregate claims of those creditors is
6 around \$500,000. Your Honor, we submit that the objections
7 are without merit and simply represent the preference by a
8 few creditors that someone other than Mr. Hague serve as the
9 plan administrator.

10 And out of 60,000 creditors who voted on the plan,
11 it's not all that surprising that we have objections to many
12 different aspects of the plan, including this one.

13 Your Honor, in its simplest terms, the objection
14 rests on a notion that Mr. Resnick, the chair of the
15 committee is too friendly with Mr. Ehrlich or was too
16 friendly and has acted as a committee member in a manner
17 that is somehow contrary to creditor interests --

18 THE COURT: That's what the written objections
19 were, but what I've heard today is that they don't think Mr.
20 Hague is as -- I'll put it this way, as much out for blood
21 as they would like.

22 MR. ASMAN: I don't think there's anything in
23 evidence that says he's not up for blood or that he doesn't
24 have the experience to do that. No questions were asked
25 about that. And I don't know that that's a confirmation

1 requirement under 1129. That's not.

2 THE COURT: Not in so many words anyway.

3 MR. ASMAN: Your Honor, unless you have any
4 questions, I'll stop there, thank you.

5 THE COURT: Okay. Does the U.S. Trustee have a
6 position about Mr. Hague's appointment?

7 MR. MORRISSEY: Your Honor, Richard Morrissey for
8 the U.S. Trustee. The U.S. Trustee raised no objection
9 about it, as the U.S. Trustee has no position on the
10 committee's choice of Mr. Hague. Unless the Court has any
11 questions for me.

12 THE COURT: No, that's fine. I just wanted to
13 know.

14 MR. MORRISSEY: Thank you, Your Honor.

15 THE COURT: All right. I'll take those points
16 under advisement. What else do we need to -- we need to
17 cover the trustee motion. Is there anything else on
18 confirmation that we need to cover?

19 MS. OKIKE: I don't believe so, Your Honor.

20 THE COURT: Okay. I have a host of rulings to
21 make on the objections. And a host of open points that
22 still need to be addressed. And a 78-page confirmation
23 order that I have many changes to make to. None of that is
24 going to happen tonight. It's already 5:10. I can't see
25 myself finishing all that.

1 MR. GOLDBERG: Thank you, Your Honor,
2 (indiscernible) this. We're very grateful for all the time
3 you've given us, Your Honor, completely understand the
4 situation. We have been working throughout the day in an
5 effort to resolve Your Honor's requests and customer data
6 point and just as we months ago sent a proposal to the
7 debtors and perhaps we could have a recess to go over that
8 and all have the opportunity to speak to and the committee
9 and then come back to you.

10 THE COURT: Yeah, is my health and schedule
11 contingent on that? You're not going to give me a break
12 from your milestone until you work that out?

13 MR. GOLDBERG: My client, Your Honor, you know, is
14 putting a tremendous amount of resources to this case.
15 We've been the subject of a wide array of accusations
16 without any evidence brought to bear and we are very focused
17 on bringing these proceedings to a successful conclusion as
18 quickly as possible.

19 We would very much like to resolve the customer
20 data issue as part of the extension of (indiscernible) with
21 Your Honor's permission.

22 THE COURT: Certainly I'll let you talk to them.
23 Mr. Hendershott, on your trustee motion, if I confirm a
24 plan, a trustee is sort of pointless, isn't it?

25 MR. HERNDERSHOTT: Yes, sir, that's why we're

1 hoping to have your consideration to (indiscernible) before
2 you confirm the plan. We understand that under Bankruptcy
3 Code 1112 there is a lot of leeway that Congress has given
4 for you (indiscernible). But, you know, admittedly it's
5 limited our understanding, we're not experts, but we believe
6 that (indiscernible) Congress' intent for 1104(a)(1), there
7 really is no leeway. It doesn't say and, or, should, could,
8 it says the trustee shall be appointed if any of the for
9 cause criteria is found. And those are fraud, dishonesty,
10 incompetence, or gross mismanagement.

11 THE COURT: Well, if you -- actually you've got
12 that slightly wrong. What the case law says is that --

13 MR. HENDERSHOTT: Okay.

14 THE COURT: -- I should appoint a trustee for
15 cause which may include various things. The case law does
16 not say that I must appoint a trustee no matter what the
17 other circumstances are in any instance where I think there
18 was any kind of fraud. The case law is actually to the
19 opposite. It actually says that I have considerable
20 discretion in deciding what constitutes cause, and whether
21 allegations of particular kinds in the context of an
22 individual case constitute cause.

23 And one of the factors it seems to me here as to
24 whether it's cause for a trustee is, by the time we got a
25 trustee in place, we'll already have a plan administrator in

1 place. We're on the verge of confirmation. It doesn't
2 really -- if I confirm the plan, it doesn't make any sense.
3 Now if I don't confirm the plan, then I have to consider it.
4 But it seems to me I have trouble thinking of anything that
5 would constitute cause at this stage of game to appoint a
6 trustee when we're right on the verge of plan confirmation.

7 MR. HENDERSHOTT: Well, I appreciate your
8 interpretation of that, you know, and I read the Court shall
9 order the appointment of a trustee, I didn't really see the
10 flexibility. But I do know Congress has given you, the
11 bankruptcy court (indiscernible) the judge, the jury and,
12 you know, the executioner. So I don't profess to be an
13 expert.

14 What I do know, sir, is that this was brought up -
15 - you know, this would've made more sense. This would've
16 made more sense back in August to have this discussion.
17 This would've made more sense back in October of last year
18 when Nexus (indiscernible) you know, brought this up.

19 Unfortunately during that time period is I
20 (indiscernible) for me personally, I was in a Category 5
21 hurricane. I lost September, October, November to the end
22 of December for any type of communication, but as soon as I
23 was able to reconnect on January 9th, 10th I think was my
24 initial letter that I brought this up at that point.

25 And that was a letter, and I understand it wasn't

1 a motion, and -- but I do want the Court to understand we
2 were told by the chairman of the UCC to write you letters.
3 And that was false advice until you clarified that for us,
4 that we had to try to put it in a motion, then that's the
5 next step that we did.

6 Then other creditors have done that as well. They
7 were pushed off until this late stage for discussion. So
8 while the timeliness is not perfect, I think Congress
9 specifically said that any point before confirmation
10 intentionally. I don't think that was an accident.

11 THE COURT: I -- certainly --

12 MR. HENDERSHOTT: (indiscernible)

13 THE COURT: The Code would permit me to do it, but
14 I still have to decide whether there's cause to do it. And
15 I just --

16 MR. HENDERSHOTT: Right.

17 THE COURT: It just seems inconsistent to me with
18 where we are on the confirmation hearing. Maybe not
19 inconsistent if we don't confirm a plan, but if I do confirm
20 a plan it just doesn't seem to me to make much sense, right.

21 MR. HENDERSHOTT: Well, if there truly is fraud,
22 Your Honor, then there is significant benefit to the
23 creditors. And again, this is why this would've been
24 beneficial to have it actually addressed a long time ago.

25 You know, we're all guaranteed to take a

1 significant financial hit. And we are limited to a \$3,000
2 you know year write off for the tens or hundreds of
3 thousands, whatever the case may be. You know, if someone
4 has \$100,000 loss, this is going to take, you know, end of
5 their natural lifetime. And if there's a case of fraud, if
6 you find that there clearly is a foundation of fraud, that
7 changes for the creditors --

8 THE COURT: What do you think --

9 MR. HENDERSHOTT: -- (indiscernible) financial
10 damages that --

11 THE COURT: What is it you think would happen if
12 right now I said, I want a trustee. What is it do you think
13 would be the consequence? What would result?

14 MR. HENDERSHOTT: I believe we would be classified
15 at the federal level as victims of fraud, given a
16 significant abilities to take this damages earlier and not
17 parse (indiscernible) amount for the next 30, 40 years
18 (indiscernible) of 3,000.

19 THE COURT: Well, you know what --

20 MR. HENDERSHOTT: (indiscernible)

21 THE COURT: -- let me just disabuse you of that
22 notion. You know, treating you victims of a fraud just
23 makes you a creditor. It doesn't give you any different
24 status or any different kind of claim than the ones you have
25 just by virtue of being an account holder.

1 MR. HENDERSHOTT: No, not for claims, for IRS
2 purposes, it's (indiscernible). I apologize for not
3 clarifying that.

4 THE COURT: Okay.

5 MR. HENDERSHOTT: Right now, we can't even write
6 off the damages that have been caused by the actions of
7 their debtors in possession.

8 THE COURT: But the appointment of a trustee -- I
9 don't think the appointment of a trustee automatically gives
10 you any right to claim that you're a fraud victim.

11 MR. HENDERSHOTT: No, you wouldn't appoint a
12 trustee, Your Honor, unless you found fraud. If you found
13 cause, one of them being fraud, then you would appoint the
14 trustee and we would also get the benefit to actually be
15 able to have some tax, significant tax consequences for the
16 financial harm that's been occurred to us.

17 We understand. You said numerous times, Your
18 Honor, the path of the (indiscernible), we know we're not
19 going to go back, you know, over the last nine months and
20 change any rulings, but again, 1104(a)(1) states, any time
21 before confirmation. They specifically open it up from this
22 very point in time to have justice served and an evaluation
23 performed, and the defraud, dishonesty, incompetence, or
24 gross mismanagement has occurred. We've never been given
25 that opportunity throughout this last nine months to have it

1 really made on that.

2 At least the creditors that submitted this, that's
3 what we're asking for. We want you to evaluate the motion
4 that we submitted with all of the different events and
5 evidence that we submitted. Our impression, Your Honor, is
6 that cause occurred, fraud occurred, dishonesty occurred,
7 incompetence and gross mismanagement occurred, but no one
8 cares what we think. We've elected you to give us your
9 ruling if you agree with that or not.

10 THE COURT: Okay. Who else wants to be heard?

11 MS. PROVINO: Your Honor?

12 THE COURT: Yes.

13 MS. PROVINO: This is Lisa Provino, pro se
14 creditor. Is there another option for that tax credit that
15 Tracy Hendershott has discussed? Because if not, then I
16 would be supportive of that particular motion that he's
17 talking about at the moment, unless you could talk about
18 something else that we would be able to do a write off.

19 THE COURT: I don't have --

20 MS. PROVINO: I probably would (indiscernible).

21 THE COURT: I don't know about this tax write off
22 or what it is that you would need to show to tell you the
23 truth but it seems to me I would be very dubious about the
24 idea that anything that could be labeled as fraud would
25 automatically give you rise to claim all of your losses as

1 tax losses. Because frauds come in many different forms and
2 they have many different victims and I would expect that it
3 -- you wouldn't get a tax benefit unless if I were to find
4 that there was something about your whole course of dealing,
5 your individual courses of dealing with Voyager was a fraud
6 that you were induced to buy cryptocurrencies that you
7 didn't want to buy that, I don't know, all kinds of things
8 that I don't even have allegations to that effect.

9 MR. HENDERSHOTT: Sir, Tracy Hendershott again.
10 Specifically it's IRS Revenue ruling 2009-9 that allows us
11 to be able to take a credit for fraud, financial fraud, but
12 it has to be declared, it just can't be self-proclaimed.
13 And I think it exists in this case and that's what we're
14 asking for you to rule on.

15 THE COURT: Okay. But then here's my problem. I
16 have no evidence. I have a lot of allegations and letters
17 of fraud, but I have no evidence.

18 MR. HENDERSHOTT: It's about 20 pages that we
19 submitted on Document 1061, Your Honor.

20 THE COURT: There's no --

21 MR. HENDERSHOTT: There's been a mountain of
22 paperwork.

23 THE COURT: But --

24 MR. HENDERSHOTT: Sorry?

25 THE COURT: But unless it -- unless I have

1 testimony from people as to what they actually did, right,
2 you know, just kind of hearsay reports or complaints about
3 specific things without a hearing from the witnesses to tell
4 me whether it actually happened, and why it actually
5 happened, and what the intent was behind it, I don't have a
6 record on which I could find fraud.

7 You understand in order to find fraud I have to
8 actually find that somebody had an intent to commit fraud,
9 right.

10 MR. HENDERSHOTT: Well, I don't know if I agree
11 with that, you know, civil laws the burden of proof is much
12 less than the criminal law. We don't have to find beyond a
13 reasonable doubt. And civil law is more likely than not;
14 isn't that correct?

15 THE COURT: Well, that part is true as to what the
16 burden of proof is but -- or the level of proof but the
17 element of fraud, one of the elements of fraud is intent.
18 Something -- and actually in many states, fraud requires
19 proof by clear and convincing evidence, not by a
20 preponderance of the evidence, which is a standard in
21 between the criminal standard and the ordinary civil
22 standard. I'm still waiting for somebody to be precise
23 enough to tell me where exactly in between, but I guess we
24 know it when we see it.

25 But fraud is definitely -- you know, intent is an

1 element of a fraud claim. So I don't -- nobody's taken
2 testimony of Mr. Ehrlich on these points. Nobody's asked
3 him. I really don't have an evidentiary record from which I
4 could find fraud.

5 You know, I'm concerned by the things you've
6 raised, I don't want to make you think that I'm sweeping
7 them under the rug and I really haven't had -- nobody's
8 really even addressed half of them in response. So I don't
9 want you to think that I'm by any means giving anybody a
10 pass on anything that's happened in this case or with
11 Voyager in general. I am not.

12 I am concerned by the things that you've
13 mentioned, but sitting here right today, I can only make
14 rulings based on evidence. And to the extent you would like
15 me today to rule that people at Voyager committed fraud, I
16 would require evidence of their actual intent and I don't
17 have it. I just don't have it.

18 MS. PROVINO: Your Honor, Lisa Provino, pro se,
19 I'm sorry, Tracy, were you going to talk?

20 MR. HENDERSHOT: Yes, just one second, Lisa.

21 MS. PROVINO: You're welcome.

22 MR. HENDERSHOT: So, Your Honor, you make a good
23 point and this goes back to our earlier conversation. You
24 know, you said despite -- or no one has submitted evidence.
25 This is our concern with the representation that we received

1 from the UCC. And the recent (indiscernible) selecting Mr.
2 Hague going forward. We have been frustrated with the lack
3 of what we consider obvious. We don't know the legal
4 procedures. I -- we thought that the documents that we
5 submitted, we worked so hard on finding all of the financial
6 reports, I mean literally a week's worth of effort that
7 weren't even into the court record was evidence submission.

8 Now, you're saying it's not. You know, our UCC
9 should have been doing this. But they didn't. And now they
10 pick the business partner of the brother of the chairman of
11 the UCC who, Your Honor, we feel the next step after Mr.
12 Hague is selected, he's going to then pick Jason Resnick's
13 brother to be his personal legal representation. I mean,
14 the conflict of interest just never ends and the lack of
15 representation that we've had as creditors has been almost
16 as frustrating as the loss of the financial (indiscernible).

17 Your Honor, my understanding is fraud, it's not
18 the only one for cause, it's dishonesty, simpler than fraud.
19 It's incompetence, it's gross mismanagement, any of these
20 quality as for cause.

21 THE COURT: But none of those --

22 MR. HENDERSHOTT: And during --

23 THE COURT: But none of those get what you wanted
24 under your revenue ruling, right?

25 MR. HENDERSHOTT: I think it's just fraud under

1 the IRS, yes. Is my recollection, but I'm not an expert on
2 IRS Code, but I do think it's specifically for fraud.

3 But talking about fraud, Your Honor, if I may.
4 Again, we're not experts, so again, what is fraud,
5 especially in a civil case versus a criminal case. I go to
6 Black Law Dictionary, I don't need to insult you, sir, but
7 I'd like to read it. It says nothing about intent. Not in
8 a court of equity Lex Law states probably includes all acts,
9 omissions, concealment which involve a breach of legal or
10 equitable duty, (indiscernible) or competence and are
11 injurious to another or by which an undue and unconscious
12 advantage is taken of another. There's not one word about
13 intent in there. It's about fraudulently committing acts
14 that causes damage to another.

15 THE COURT: Well, fraud means fraudulently doing
16 something that's kind of a tautology there. I will tell you
17 that fraud in almost every context I know requires proof of
18 intent. If any of the lawyers in the room think I'm wrong
19 about that, speak up please. But nobody is doing so. It's
20 kind of -- it's a basic. What can I say.

21 MR. HERNDERSHOTT: Okay. So Black's Law is not
22 correct.

23 THE COURT: I'm sorry?

24 MR. HENDERSHOTT: So the definition in Black Law
25 for a court of equity is not correct.

1 THE COURT: I don't know what the context was, I'm
2 just telling you fraud, in my understanding, requires proof
3 of intent. That's been something I've understood my entire
4 legal career. Every time I've litigated a fraud claim, any
5 time I've ruled on a fraud claim, intent has been element of
6 the offense.

7 I am not aware of -- I'm aware of some things like
8 fraudulent transfers, where people use the word, and it
9 really isn't fraud, it's kind of a misnomer, but when you're
10 talking about actual fraud of the kind that's addressed in
11 Section 1104 that requires intent.

12 Let me hear from --

13 MR. HENDERSHOTT: Okay. So are you making your
14 ruling now, no fraud, no dishonesty, no incompetence, no
15 risk management, or is this the discussion and your ruling
16 comes later?

17 THE COURT: Well I'm going to hear from the debtor
18 first.

19 MR. HENDERSHOTT: Okay. Thank you, sir.

20 THE CLERK: Your Honor, we're coming on the four
21 hour mark.

22 THE COURT: Okay. Why doesn't everybody relog in
23 on the telephone and then we'll finish, okay.

24 (Recessed at 5:28 p.m.; reconvened at 5:44 p.m.)

25 THE CLERK: Your Honor, would you like me to --

1 THE COURT: Yeah. Why don't you go get them.

2 MR. GOLDBERG: Good afternoon, Your Honor. Adam
3 Goldberg for the record on behalf of Binance.US. We're
4 having some just ongoing dialog about the issues in an
5 effort to resolve things for Your Honor. I think if you
6 could give us another 15 minutes, we should be able to
7 report back.

8 THE COURT: Well, I've lost patience with my
9 request that you agree to change the milestone, and I don't
10 appreciate you holding that up while you try to resolve
11 other issues. It is 100 percent clear, including based on
12 the exculpation that you and others would want, that we're
13 not going to get there today because I have to give the
14 Government a chance to file its response either this
15 afternoon or tomorrow.

16 It's 100 percent clear, since it is already quarter
17 to 6:00 that I cannot organize my thoughts, issue a ruling
18 on the disputed points, and go through the 78-page
19 confirmation order to get something done by midnight. So
20 tell me that you either extend it, or we'll stop. And I'm
21 tired of being toyed with on that point. Okay? I want an
22 answer.

23 MR. GOLDBERG: Very well, Your Honor. May I have
24 five minutes to call my client?

25 THE COURT: Yes.

1 MR. GOLDBERG: Thank you.

2 MS. PROVINO: Your Honor?

3 THE COURT: Yeah.

4 MS. PROVINO: This is Lisa Provino. May I speak,
5 or I'm not allowed to speak yet?

6 THE COURT: I think we should wait for the, in
7 fairness the Binance lawyer who's gone out to call his
8 client. Let's wait for him to come back, okay? He has a --

9 MS. PROVINO: I appreciate that, sir.

10 THE COURT: He has a right to hear what you --

11 MS. PROVINO: No. That's fine. I just don't want
12 you to forget me. Thank you.

13 THE COURT: How could I do that?

14 MS. PROVINO: I would hope that you won't.

15 (Pause)

16 THE COURT: Yes?

17 MR. GOLDBERG: For the record, Adam Goldberg from
18 Lantham and Watkins on behalf of Binance,US.

19 Thank you for bearing with us, Your Honor. This
20 has been a long process, and we appreciate everyone's
21 efforts towards it. Binance.US consents to an extension of
22 the milestone for entry of the confirmation order due
23 tomorrow at 5:00 p.m., and we expect to be working with the
24 Debtors and the committee to respond to Your Honor on the
25 customer data point in the meantime, and hope to have a

1 proposed resolution in the morning, if not tonight.

2 THE COURT: Okay. All right. Let's get back to
3 the trustee motion then. There was a creditor on the phone
4 who wished to be heard?

5 MS. PROVINO: Yes, sir. Myself, Lisa Provino, and
6 my husband is here as well, Scott Provino.

7 So what -- we have a few questions for you, Your
8 Honor, please. So we did, just while we were waiting, we
9 looked up the IRS Ruling 2009-9 and 2009-14, both of which
10 do say that we need -- we definitely need it to be declared
11 either a Ponzi, or a criminally fraudulent investment of
12 some sort in order for us to be able to write off these
13 significant losses that --

14 THE COURT: Yeah. I was curious about --

15 MS. PROVINO: -- most of the --

16 THE COURT: I was curious about moving 2009-9, and
17 I looked it up, and it deals with Ponzi schemes.

18 A Ponzi scheme is quite different from what
19 anything that's been alleged here. You know, in a Ponzi
20 scheme, people are lied to about what their money is being
21 used for. I don't think anybody here has alleged that they
22 weren't actually submitting money for the purposes of
23 investing in cryptocurrencies, or that Voyager wasn't
24 actually buying cryptocurrencies, or that their account
25 statements were fictitious, or any of the kinds of things

1 that would be characteristic of a Ponzi scheme.

2 And the reason for that particular ruling was that
3 you have to show that your loss is essentially a theft, that
4 the Ponzi scheme perpetrator has stolen, not just that you
5 didn't get all of your recoveries and that things went bad.
6 I didn't get a chance to look at the other ruling, but I
7 can't imagine anything that's been alleged, let alone any
8 evidence that I've offered, that would support a Ponzi
9 scheme finding in this case. Mind you --

10 MS. PROVINO: Well, that's my next --

11 THE COURT: -- there are some people who allege
12 that cryptocurrencies, themselves, are Ponzi schemes because
13 they don't believe that cryptocurrencies are real, but
14 nobody here has asked me to rule that.

15 MS. PROVINO: Correct, Your Honor. So well, I
16 guess where we -- at least where we particularly stand, as
17 we have received phone calls all weekend here. There have
18 been calls from people that said that even their money got
19 stolen through the Voyager platform, some Nigerian -- and
20 I'm not exactly sure how, but I was trying to understand the
21 details.

22 But my question to you, Your Honor, is going back
23 to those five points of criminal intent where it says -- I'm
24 just going to say they're points, 2, 3, and 4, which we
25 looked up on the internet, the defendant possesses

1 knowledge, the statement is untrue, false statement intended
2 to deceive the intended victims, intended victim justifiably
3 relies in the statement, and that is what I have received
4 phone calls for this past weekend.

5 So my question to you, Your Honor, is because I
6 don't know if a pro seer can actually subpoena somebody. If
7 there is a way, please tell me. I will -- we will do that.
8 I guess it's a little late, but we just need to know if we
9 can.

10 And secondly, if we have an opportunity to prove
11 off the fraud and possibly put some witnesses on the stand.
12 Again, I know we're pro se, but please take this into
13 consideration because we have had significant losses, and I
14 honestly am begging you right now to please be openminded to
15 this.

16 THE COURT: Yeah. Did any of you who want to do,
17 did you file proofs of claim alleging that you were victims
18 of fraud?

19 MS. PROVINO: I'm sorry, sir. Could you explain
20 specifically what you're asking now?

21 THE COURT: Yeah.

22 MS. PROVINO: You mean, the claim that they didn't
23 allow me to -- for voting purposes claims, and then I had to
24 fight for that? Which claim are you speaking of, sir?

25 THE COURT: Well, you know, the Debtor filed

1 schedules of people that thought that had -- you know,
2 accountholders, who would have thought their claims were.
3 Anybody who thought they had other claims should have filed
4 a proof of claim form. So if you thought you were a fraud
5 victim, not just that you were an accountholder who just
6 happened to be owed money, but a fraud victim, you should
7 have filed a proof of claim saying that you believed you
8 were a fraud victim.

9 So to the extent that you did that, then you can
10 get a litigation. You can get a ruling and a litigation of
11 your claim as to whether you were a fraud victim. But if
12 you didn't, then being on the eve of confirmation, I don't
13 know how you're going to get that, at least in this
14 particular context, at least from me. You would have to sue
15 the perpetrators of the fraud, who you think defrauded you,
16 and get a ruling in that context.

17 MS. PROVINO: Well, lesson's learned. These are
18 life lessons. Is there a way, though, Your Honor, for pro
19 seers to subpoena someone? Could you answer that for me,
20 please?

21 THE COURT: Well --

22 MS. PROVINO: Or do we need a (indiscernible -
23 5:57:37) for that.

24 THE COURT: Yeah. I'm not supposed to give you
25 legal advice. I'm just supposed to rule on things. There

1 are procedures in the Code for subpoenaing people. Usually,
2 if you want to subpoena somebody in connection with a motion
3 that's actually pending, you have to issue the subpoena in
4 accordance with requirements in the rules and have it served
5 on the recipient, and if there isn't a particular proceeding
6 pending for which the testimony is sought, you'd need
7 permission to issue a subpoena under Rule 2004. That's
8 about as much as I, as the judge, should be giving you
9 advice about, okay?

10 MS. PROVINO: That's fair. I appreciate that.
11 I'll go back to the (indiscernible - 5:58:25) rules,
12 bankruptcy sections. I've looked over, just it's a lot to
13 digest. So I'll go back to that section. You said Rule
14 2004, right, 2-0-0-4?

15 THE COURT: That's the Rule if you don't have
16 something -- a motion pending to which the testimony really
17 relates. If you have a contested matter or an adversary
18 proceeding where it's relevant, then the Bankruptcy Rule
19 is -- hang on one second. Rule 9016, which simply
20 incorporates Rule 45 of the Federal Rules of Civil
21 Procedure.

22 MS. PROVINO: And I will review that. Thank you,
23 sir.

24 THE COURT: Okay.

25 MS. PROVINO: The only other question I have -- and

1 I'm sorry for the multiple questions here -- but in terms of
2 the for cause, if you will, if the Debtors are removed and
3 all the releases are voided, does that mean that we can't
4 still go on the Ponzi scheme issue?

5 THE COURT: If the --

6 MS. PROVINO: Or is that, like you said, you have
7 to sue them for fraud?

8 THE COURT: I missed a part of your question. If
9 what happens?

10 MS. PROVINO: Oh, I'm sorry. If the Debtors are
11 removed and their releases are voided, would that be a for
12 cause for the Ponzi scheme or it basically goes back to what
13 you had said before?

14 THE COURT: I'm not sure I understand the question.
15 If the Debtors are what and the releases are voided?

16 MS. PROVINO: If the Debtors are removed from the
17 releases. You know how we've been talking all afternoon
18 about the releases? So if they're just voided out, does
19 that mean we can't go after them for cause for the fraud,
20 for the Ponzi scheme? I mean, we're concerned about tax
21 consequences.

22 THE COURT: Well, when you say them, if you want to
23 go after individuals and you believe you have a fraud claim,
24 there's nothing in what we're doing here that would stop you
25 from doing that. If you want to make a fraud claim against

1 the Debtors, it should have been in a proof of claim, and if
2 it was not --

3 MS. PROVINO: And when would that have been done,
4 by 10/3, or is that a different date, sir?

5 THE COURT: I think that was -- I'm getting a lot
6 of headshakes, yes, back last October. So if it's not in a
7 proof claim --

8 MS. PROVINO: But --

9 THE COURT: If it was not in a proof of claim, you
10 would need to amend a claim that you filed or get permission
11 to file a late claim, and there are rules that govern that,
12 too. I don't know what else to say.

13 MR. AZMAN: Your Honor?

14 THE COURT: Mr. Azman.

15 MR. AZMAN: Darren Azman for the Committee. If I
16 could just speak to Ms. Provino?

17 Ms. Provino, if there are things that we can do to
18 mitigate tax consequences or tax liabilities for what is
19 really going to be the bulk of the creditor body, that's
20 certainly something that either the committee or when the
21 plan goes effective, the plan administrator is happy to
22 consider. I think what I would suggest is that it's not
23 necessarily something that needs to be decided today.

24 Certainly, somebody can come back to the Court and
25 file a motion seeking some type of declaratory judgment

1 relief to contend that whatever this was it was. And
2 whether it satisfies that tax provision, I don't know, but
3 that's certainly something that if it benefits the entire
4 creditor body, I'm sure that the plan administrator would
5 certainly want to consider.

6 MS. PROVINO: Mr. Azman, I want to truly appreciate
7 you mentioning that. I feel that that is what we need to
8 do, and I won't belabor this, but at the moment, I just
9 wanted to say thank you for that. And thank you, Your
10 Honor, for allowing me to speak on this matter because it
11 does significantly affect us.

12 THE COURT: Okay.

13 MS. PROVINO: Thank you so much.

14 THE COURT: Okay. Let me hear from the Debtor on
15 this issue then.

16 MS. SMITH: Thank you, Your Honor. Allyson Smith,
17 Kirkland & Ellis, on behalf of the Debtors.

18 I'm sure you saw we did file an objection to these
19 motions. That objection raised a number of the same points
20 that Your Honor has already --

21 THE COURT: It didn't really address the charges.
22 It sort of gave them the back of your hand.

23 MS. SMITH: Well, there's really no evidence or
24 anything other than just kind of assumptions and conclusory
25 statements.

1 THE COURT: That's true, but I would have expected
2 a little more explanation. It seemed odd to me to just have
3 none.

4 MS. SMITH: I mean, I think we -- you know, we have
5 the special report out, we've done extensive disclosures and
6 conversations about the special committee's investigation.
7 I think from our view, they were unfounded statements that
8 didn't necessarily warrant giving any weight to.

9 THE COURT: Okay.

10 MS. SMITH: I did want to reiterate that the
11 Debtor's position has not changed. There is no cause to
12 appoint a trustee under 1104(a)(1), and despite statements
13 that the movants say otherwise, any appointment to do so
14 would not be in the best interest of creditors, particularly
15 at this stage of the cases. We're on day three of a
16 confirmation hearing, seeking authority to proceed with
17 implementation of the plan. The plan overwhelmingly is
18 supported by voting creditors, and proceed with
19 distributions to customers.

20 These cases have obviously been difficult, and I do
21 understand the frustrations of customers, but no party has
22 offered any actual evidence of finding of fraud, and to
23 appoint a trustee at this point in time would essentially
24 put parties back at day one rather than accomplishing what
25 we understand customers' role is to be, the efficient return

1 of assets and conclusion to this process.

2 And lastly, but importantly, I did want to
3 highlight that also appointment of a trustee or conversion
4 to a Chapter 7 is an APA termination event.

5 THE COURT: Okay. All right. Is there anything
6 else? Any other motions or any other issues that we need to
7 address today?

8 MS. SMITH: No, Your Honor.

9 MS. DIRESTA: Your Honor?

10 THE COURT: Yeah.

11 MS. DIRESTA: Your Honor, this is a pro se
12 creditor. I have a question.

13 THE COURT: Yes. What is your name?

14 MS. DIRESTA: My name is Gina DiResta.

15 THE COURT: Okay.

16 MS. DIRESTA: And I was not at the hearing when a
17 fee examiner was requested, but I heard through fellow
18 creditors that it was approved. And so I wanted to confirm
19 with you that was indeed approved because I was also told
20 that there was no orders filed if that was approved.

21 THE COURT: What I ruled at the time was while I'm
22 not a giant fan of fee examiners, and I did not want
23 somebody who was going to redo work that the U.S. Trustee
24 had already done or do what unfortunately my past experience
25 has been in the case of some fee examiners, which is simply

1 try to blackmail fee reductions from Debtors. And I asked
2 if the Debtors and the U.S. Trustee and the committee could
3 discuss and see if they could agree on something that would
4 work within that parameter, and I think they've been
5 discussing it. Nobody has gotten back to me to say that
6 they can't reach an agreement, but it does seem to be taking
7 some time.

8 MS. DIRESTA: Okay. Thank you for the
9 clarification, Your Honor.

10 THE COURT: I was in private practice once and
11 actually had a fee examiner say to us after raising a few
12 issues that look, all I want is five percent. I don't care
13 how. And I will never appoint anybody who does that.
14 That's just wrong.

15 MR. MORRISSEY: Your Honor, Richard Morrissey for
16 the U.S. Trustee.

17 Actually, to add one party to the conversation in
18 addition to the committee and the Debtors, counsel, we also
19 circulated names to Mr. Kirpalani, if he's still here, but
20 because he had objected to the fee examiner as well. So we
21 did pick someone, and I think I advised Your Honor at the
22 hearing on the Paul Hastings retention application that Lori
23 Lapin Jones was the person that had been --

24 THE COURT: That's right. You know, I forgot
25 entirely that you had said that. I apologize.

1 MR. MORRISSEY: But the creditor on the phone is
2 correct, we have not yet submitted a proposed order. Quite
3 frankly, Your Honor, the confirmation hearing has been all-
4 consuming, but as soon as --

5 THE COURT: That's something you don't have to tell
6 me.

7 MR. MORRISSEY: -- possible after it's over -- yes.
8 Thank you, Your Honor.

9 THE COURT: All right. Any other issues for today?

10 MR. WARREN: Your Honor, this is pro se creditor
11 Jon Warren. Can you hear me?

12 THE COURT: I can.

13 MR. WARREN: All right. I had one quick question
14 to you, is there a way that we can request the transaction
15 history, including withdrawals of Voyager insiders and board
16 of directors?

17 THE COURT: You would have had to make a discovery
18 request for that information, and Voyager would have had the
19 opportunity to object if it thought it was improper. It
20 would be -- I can't say anymore than that. I can't tell you
21 how to do it. I can't give rulings and things that aren't
22 in front of me. It's just not something I'm allowed to do
23 as the judge, okay?

24 MR. WARREN: Thank you for the information.

25 THE COURT: All right. Anything else? All

1 right --

2 MS. DIVITA: Your Honor, I'm sorry. I was
3 struggling to get off mute, but this is Michelle DiVita.
4 I'm a pro se creditor, and I also filed a motion in regards
5 to appointing a trustee.

6 THE COURT: Yes?

7 MS. DIVITA: I just wanted to make maybe a few
8 quick clarifying statements, but I think this plan as it's
9 contemplated today does give the Debtors -- still, they
10 retain a great deal of business judgment, particularly in
11 regards to risk management and things of that nature. I
12 will say that I was maybe surprised earlier when there was a
13 discussion surrounding the confirmation order and exactly
14 what conduct the special committee investigated. It was my
15 understanding that that was a very limited investigation and
16 only pertained to the (indiscernible - 6:10:23).

17 And so I was surprised to hear that it also
18 included things such as wagers, communications to the
19 public, and then also decisions to extend loans beyond
20 (indiscernible - 6:10:32), particularly in regard to those
21 transactions that occurred shortly before bankruptcy and the
22 filing thereafter.

23 I just kind of maybe wanted to provide some context
24 in terms of why I filed a trustee motion.

25 Really, if the Court (indiscernible - 6:10:52) in

1 the sense that it seeks to give creditors their money back
2 as quickly as possible, and that was really kind of the
3 premise of the FTX transaction.

4 I, you know, kind of bit my tongue back in October.
5 I think that I maybe I'm a little more risk-averse than
6 other people on the phone, and that's why my claim is much
7 lower just because I chose to diversify my cryptocurrency
8 holding.

9 But I will just say that I was a little surprised,
10 maybe back when the UTC filed one of their first objections
11 to say that really no wrongdoing outside of this 3AC loan
12 had occurred, and really my frustration stems from things I
13 found in the financial statements and just kind of this
14 general sense from the Debtors that, you know, these were
15 very experienced finance professionals, and, you know, they
16 had fees beyond cryptocurrency and asset management and
17 things of that nature. And so kind of having to rely on
18 this very limited investigative report, just thinking, let's
19 get to plan to confirmation.

20 Now, today, it seems like we've had more time.
21 There is more that could be investigated, and it hasn't
22 been. So really an examiner motion wasn't appropriate, but
23 I think that between the conduct leading up to the
24 bankruptcy, combined with, you know, this assurance that the
25 FTX transaction will be great, all in light of the fact

1 that -- you know, Alameda was an insider shortly before the
2 filing of bankruptcy petition, not to mention, I think that
3 under United States law, they're still technically
4 considered an insider. It's just really this combination of
5 factors that really made me to distrust the debtors, and I
6 know a lot of the creditors on the phone maybe agree with
7 that assertion as well.

8 And so I certainly don't want to -- I do not envy
9 the position that you are in, whatsoever. I certainly do
10 not have admissible evidence to any of these factors. I,
11 personally, have spent a lot of time on this matter, and I
12 don't have a ton of time to dedicate to it in the future,
13 but really just trying to rely on the deference of the
14 bankruptcy professionals, and you, yourself, Your Honor, to
15 make a decision, and as we confirm this plan, with maybe
16 that context in mind.

17 And I think as you've heard from these pro se
18 creditors, we aren't bankruptcy professionals. We're not
19 experts here, and we don't know I think the procedural part
20 of things I've seen has at least, for me, personally, have
21 one of the biggest learning curves.

22 THE COURT: Right.

23 MS. DIVITA: These are just things that I really --
24 the purpose of my motion was to just kind of paint that in a
25 context of distrust and their kind of (indiscernible -

1 6:13:42) today or what actions that have led us to where we
2 are today. That's all I have to say, Your Honor. Thank
3 you.

4 THE COURT: Okay. In terms of just to correct one
5 thing you said --

6 MS. DIVITA: Yes.

7 THE COURT: When you said you were frustrated that
8 the committee found that there was nothing wrong, other than
9 the 3AC loan, I need to make clear, the special committee's
10 job really was to figure out what claims belonging to the
11 Debtor and the estate could be pursued, okay?

12 You mentioned specifically financial statements.
13 I, personally, have no idea if there was anything wrong with
14 the financial statements or not or whether there was any
15 fraud and whether that injured anybody. But if a customer
16 or a shareholder was injured by a misstatement of financial
17 condition, that's not a claim that would belong to the
18 debtors. That's a claim that would belong to the customers.
19 Okay?

20 And the debtors have no ability or right, let alone
21 ability, to pursue it for customers, nor does the committee.
22 The committee's job is to pursue creditors' interest not
23 with respect to individual claims, but as to the conduct of
24 the case, how the business will be handled, et cetera.

25 So I know probably many of you think that you're

1 frustrated because neither the debtors, nor the special
2 committed, nor the unsecured creditors committee championed
3 your cause on allegations about, for example, whether
4 Voyager was on the brink of bankruptcy, but that's not
5 really their job. I know you may have assumed it's their
6 job, but it's not.

7 Those are claims that belong to you individually
8 that if you believe you have them, you need to pursue. And
9 they're not being released. Nobody is purporting to release
10 them, nobody is purporting to express any view about whether
11 they're right wrong, but I just -- I hope -- I've tried many
12 times throughout the hearing here -- and it's resulted in
13 extending the hearing quite a bit -- to give you, all of
14 you, a lot of leeway as to the questions you can ask and to
15 try to explain things because I think it's important that
16 people understand and feel that their questions have been
17 heard and that the process is open and that they understand
18 it as much as possible, but I still think that on that
19 particular point, there's still some confusion, okay?

20 MS. DIVITA: Yes. And I'm sorry, Your Honor. I
21 was referring to the creditor committee's findings. I don't
22 think that that changes your statements by any means, but
23 just to clarify that point, and say subsequently, had it
24 been asked to customers to contribute their direct claims to
25 a wind-down or to the trust that would then prosecute those

1 claims so.

2 There were direct claims at least contemplating in
3 the beginning, and I think that the unsecured creditors
4 committee also previously referenced --

5 THE COURT: Okay.

6 MS. DIVITA: -- but only 60,000 people here have
7 voted. So that's maybe a clarifying point. And I think
8 that we're relying on these professionals to meet those
9 assertions in regard to those direct claims and/or other
10 claims.

11 THE COURT: Okay.

12 MS. DIVITA: That's all. Thank you, Your Honor.

13 THE COURT: All right. Is there anybody else who
14 wants to be heard? Okay.

15 I'm going to close the argument record then. I'll
16 reserve decision. I have a lot of homework and prep to do
17 to make rulings on these motions and to review the proposed
18 order. It sounds like people are still reviewing, and I'm
19 trying to decide on certain provisions.

20 Whatever is the version of the order that was sent
21 to us this afternoon, I am going to work on. So if you make
22 changes, make sure you are very clear as to which specific
23 provisions they relate to so I don't get lost in looking at
24 them tomorrow. But I will be working and making my own
25 adjustments to kind of editorial provisions, and I may have

1 other questions for you as I review the full scope of the
2 extended order.

3 And perhaps we should resume at 2 o'clock tomorrow,
4 at which point, I will read my rulings into the record and
5 ask any remaining questions that I have about the order.
6 Okay. Does that work?

7 MR. SLADE: Very good, Your Honor, thank you.

8 THE COURT: Okay.

9 MR. GOLDBERG: Your Honor, would you like us in
10 person or by phone?

11 THE COURT: Let's do it by person for sure as to
12 the Debtors, Binance, and the committee. Anybody else who
13 want to be over here in person can be here in person, but
14 has permission to be on the phone. Okay? I think the rest
15 of you, it's useful to have you in one place if an issue
16 comes up because you're already here, you can discuss it,
17 and we can resolve it more quickly. When you're on the
18 phone, it takes forever. Okay?

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 (Whereupon, the proceedings were concluded at 6:19
21 p.m.)
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CERTIFICATION

I, Sheila Orms, certify that the certify
that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings
in the above-entitled matter.



Dated: March 9, 2023

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